

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

UNITED STATES OF AMERICA,
Plaintiff,

vs.

ARAPAHO JAMES OLDMAN,
Defendant.

Case No. 18-CR-20-SWS

Casper, Wyoming

Volume II

January 8, 2019
8:34 a.m.

TRANSCRIPT OF JURY TRIAL PROCEEDINGS
BEFORE THE HONORABLE SCOTT W. SKAVDAHL
UNITED STATES DISTRICT JUDGE
AND A JURY OF TWELVE AND ONE ALTERNATE

APPEARANCES:

For the Plaintiff: MR. JASON M. CONDER
United States Attorney's Office
P.O. Box 449
Lander, Wyoming 82520

For Defendant Oldman: MS. GALIA Z. AMRAM
MS. TRACY RACICOT HUCKE
Office of the Federal Public Defender
214 West Lincolnway, Suite 31-A
Cheyenne, Wyoming 82001

Court Reporter: MS. ANNE BOWLINE, RMR, CRR
111 South Wolcott Street, Room 217
Casper, Wyoming 82601
(307) 235-3376

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1 (Proceedings commenced at 8:34 a.m., January 8, 2019.)

2 (The following took place outside the presence of the
3 jury.)

4 THE COURT: Thank you. Please be seated. I note the
5 presence of defendant, presence of his counsel, and counsel
6 for the United States.

7 A couple of housekeeping matters. First, yesterday
8 there was a discussion regarding reasonable doubt. I wanted
9 for the record to note in rejecting the request by the
10 defense, the Court would cite the parties to *United States v.*
11 *Petty*, P-E-T-T-Y, 856 F.3d 1306, wherein the Tenth Circuit
12 discussed the appropriateness of the beyond a reasonable doubt
13 instruction as given by the Court.

14 The second item is the summary of phone calls,
15 messages. Have you had a chance to confer with each other on
16 that? Mr. Conder?

17 MR. CONDER: Your Honor, previously we have but not
18 recently. So I apologize for that, Your Honor.

19 MS. AMRAM: I received some materials and summaries
20 in discovery this morning that I haven't had a chance to look
21 at, but I want to make sure that's everything. But if we
22 could talk and I could confirm at lunch.

23 MR. CONDER: And, Your Honor, those witnesses
24 wouldn't testify until we've had a chance to talk, so we'll
25 talk before then.

1 THE COURT: Very well. The third thing I have is in
2 regards to Ms. Addison. Any further developments or further
3 insights based upon your evening research, Mr. Conder?

4 MR. CONDER: Your Honor, I have not heard anything
5 this morning. Ms. Jacobson from the U.S. Attorney's Office
6 has been in contact with Ms. Jackie Nelson and is hoping to
7 give an update to me and as the day progresses. So we have
8 not heard anything yet today other than what I informed the
9 Court in the Government's motion, that she does have a blood
10 infection, a bone infection, that she cannot be transported
11 even by ambulance.

12 And attendant, the reason -- the anticipated
13 potential release date of Wednesday is based, according to
14 Dr. Nelson, on subsequent testing. If that subsequent testing
15 comes back on Wednesday as positive, then Ms. Addison may be
16 released subject to certain conditions and terms and things
17 like that. But that's all the Government knows today, Your
18 Honor.

19 THE COURT: All right. Anything further regarding
20 that, Ms. Amram?

21 MS. AMRAM: Your Honor, I did just want to briefly
22 inform the Court I did receive the Government's motion last
23 night, and the only additional information I wanted to present
24 to the Court, other than what I discussed yesterday about why
25 I don't think she's an essential witness because of all of the

1 other witnesses, was there does appear to be a requirement in
2 the case law about basically that this is the only option.

3 And Ms. Addison has been sick for some time. In
4 her -- I believe it was the last interview she had with the
5 Government, which was a few weeks ago or a month ago, they
6 picked her up from the hospital. And I could be wrong about
7 the dates. I could pull the 302 if the Court wants. But they
8 picked her up from the hospital. She got tired during the
9 interview, and they had to stop the interview because she was
10 tired. At that point she'd already had her foot amputated.

11 So they've known that she's been sick for a while,
12 and they could have requested a deposition earlier with more
13 notice. At this point we don't even -- we didn't even have a
14 day's notice before trial. They requested it during trial. I
15 understand that she was recently hospitalized, but this seems
16 to be different. If you had a witness who was in a car
17 accident two days before trial or was in a car accident on
18 their way to court and there would have been no way of knowing
19 that they could have been unavailable, whereas here the
20 Government was on notice that she was really sick.

21 So for that reason we object both to taking the
22 deposition, and then if the Court allows that, we will make a
23 subsequent objection to its admission at trial.

24 THE COURT: All right. Here's what we'll do. I'd
25 cite the parties to *U.S. v. Yates*, 438 F.3d 1307. That's

1 Y-A-T-E-S. It's a 11th Circuit opinion discussing the
2 appropriateness of witness testimony by means of a two-way
3 videoconference and whether or not it violates the defendant's
4 Sixth Amendment rights.

5 In that case they found that under certain
6 circumstances and based upon certain findings, the Court may
7 allow such testimony. But to do so, the Court must hold an
8 evidentiary hearing and find that the denial of physical
9 face-to-face confrontation at trial is necessary to further an
10 important public policy and that the reliability of the
11 testimony is otherwise assured.

12 What I will do is I would ask the United States, if
13 they wish to pursue the testimony of Ms. Addison, they will
14 need to arrange for Dr. Nelson to appear by video or otherwise
15 and testify in an evidentiary hearing outside the hearing of
16 the jury as to Ms. Addison's circumstances and limitations.
17 And then we will look at whether or not that evidentiary basis
18 supports allowing the testimony by video teleconference.

19 That raises the other issue of the ability to do so.
20 I don't know what facilities they would have, but that will be
21 another question in terms of any coordination of that.

22 A Rule 15 deposition, I believe it -- it is
23 problematic in a number of ways. First and foremost, I'm not
24 about to direct that we suspend proceedings, send everyone up
25 there, including a defendant in custody, to sit in a hospital

1 room for a deposition. That's not in the public interest or
2 in the -- anyone's safety or -- it's just not feasible.

3 The car wreck issue, it might be that certainly they
4 knew that she was ill, but they didn't know that she was going
5 to be hospitalized and tied to various treatment and
6 limitations. It's one thing for her to get tired and maybe
7 need to go to the hospital for a checkup, but it's a whole
8 nother thing for her to be put into the hospital and have a
9 life-threatening condition that would be potentially
10 problematic if she were to be removed from the hospital.

11 So while certainly there was a higher risk of her
12 potential for not being available, I don't think that the
13 circumstances are such that it was reasonable to anticipate
14 the need to take a Rule 15 deposition prior to trial.

15 That being said, look at that case. Confer with
16 Dr. Nelson. And what we'll do is either lunch, evening,
17 sometime when we're not using the jury's time, we'll take up
18 that evidentiary hearing so that we can determine the
19 parameters of and necessity of doing so.

20 Mr. Conder, anything else?

21 MR. CONDER: No, Your Honor. The United States would
22 agree and has read that case, and that is an accurate
23 representation of what needs to occur. So the Government will
24 get on it.

25 THE COURT: All right.

1 MS. AMRAM: Your Honor, can I make sure I got the
2 cite right. Was it 413 F.3d 1307?

3 THE COURT: Yes, ma'am.

4 MS. AMRAM: And I would ask that the Court -- for the
5 Government to produce discovery for the evidentiary hearing,
6 which would be Fatima Addison's medical records from her
7 hospitalization. I'm not asking for all of her medical
8 records ever, which I'm sure are voluminous, but the records
9 since she's been hospitalized so we can adequately
10 cross-examine the doctor if the evidentiary hearing happens.

11 THE COURT: I would ask that any medical records that
12 the United States has be provided to the defense so they may
13 adequately question Dr. Nelson.

14 All right. Anything else we need to take up before
15 we resume?

16 The testimony -- I will advise you that we have
17 figured out the annotator removal was problematic, which shut
18 down the jury and various other monitors, but we have bypassed
19 that. So all the monitors are working. The annotator still
20 isn't working, but we will work on that later. But at least
21 we have the ability to use everything short of that.

22 So we should be ready to go. Let's bring in the
23 ladies and gentlemen of the jury.

24 (The jury entered the courtroom at 8:44 a.m.)

25 THE COURT: Thank you. Please be seated. Good

1 morning, ladies and gentlemen of the jury. We have fixed the
2 snafu that led to the absence of your monitors, and I'm
3 hopeful that they will work and that our timing will be a
4 little better as we progress.

5 That said, at this time, Mr. Conder, the United
6 States may re-call its witness.

7 MR. CONDER: Thank you, Your Honor. The United
8 States would call Fremont County Coroner Mark Stratmoen.

9 THE COURT: And I would ask that he be administered a
10 new oath, having slept on the last.

11 (The witness was sworn.)

12 MARK STRATMOEN, GOVERNMENT'S WITNESS

13 DIRECT EXAMINATION (RESUMED)

14 BY MR. CONDER:

15 Q. Mr. Stratmoen, we left off last night talking about some
16 photographs at the main level of the house at 331 Great Plains
17 Road. Do you recall that?

18 A. Yes, sir.

19 Q. And in preparing to testify today, did you have an
20 opportunity to review Government's 4-10, 4-11, 4-12, 4-13, and
21 4-14?

22 A. Okay.

23 Q. Did you have a chance to review those, and were they true
24 and accurate depictions of the scene as you saw it that night
25 on November 30, 2017?

1 A. Yes, sir.

2 MR. CONDER: Your Honor, the United States would move
3 publish to the jury 4-10, 4-11, 4-12, 4-13, 4-14.

4 THE COURT: Any objections?

5 MS. HUCKE: No objections.

6 THE COURT: 4-10, 4-11, 4-12, and 4-13 will be
7 admitted.

8 MR. CONDER: And 4-14.

9 THE COURT: And 4-14 as well.

10 (Government's Exhibits 4-10, 4-11, 4-12, 4-13,
11 and 4-14 received.)

12 MR. CONDER: Thank you, Your Honor.

13 Q. (BY MR. CONDER) Mr. Stratmoen, I'd direct your attention
14 first to 4-10. If you could, tell the jury what that is,
15 where that is, what you're looking at.

16 A. That photo was taken from pretty much the area between the
17 living room and the kitchen, looking at the stairway that goes
18 up to the split -- upper split level.

19 Q. And now 4-11 -- or -- or, yeah, 4-11.

20 A. That would be looking at the direction on the north side
21 of the kitchen.

22 Q. And 4-12?

23 A. Looking at the northeast corner of the kitchen.

24 Q. And 4-13?

25 A. And looking toward the east, that is the dining table

1 that's in the area just south of the kitchen.

2 Q. And in that photograph, on the right-hand side it shows
3 there's a door. Is that the front door or the back door?

4 A. That would be the back door.

5 Q. Next, 4-14.

6 A. That would be the surface of the dining room table at a
7 little closer view.

8 Q. So once you entered the house at 331 Great Plains Road,
9 once you walked through the main level, where did you go next?

10 A. We would have then proceeded to the basement area.

11 Q. And how did you get down there? Describe what you did,
12 what you saw, and the layout.

13 A. Basically we entered down the stairs on our initial
14 walkthrough very carefully, just to get an overview of the
15 general layout and see what we were dealing with as far as the
16 investigation.

17 Q. And when you got down there, just generally, what did you
18 see? Environmental conditions? Was it hot? Was it cold?

19 A. The area was cool but comfortable. There was one open
20 window on the west side of the basement. The front door had
21 been opened for a time too. So the interior of the house was
22 probably not at its normal maintenance temperature. The
23 basement was extremely cluttered with different degrees of
24 property in piles, somewhat poor housekeeping generally. The
25 furnace was operational, which was maintaining the temperature

1 even though the windows were open. And generally there was,
2 we immediately noticed, a certain amount of biologics in a
3 portion of the basement.

4 Q. And what do you mean by "biologics"?

5 A. Biologics are something that looks like it may be apparent
6 blood. And that was confined for the most part to what we saw
7 that was in the northwest corner of that portion of the
8 basement.

9 Q. And, Mr. Stratmoen, in preparing to testify here today,
10 did you have an opportunity to view Government's Exhibits 4-15
11 through 4-27, showing entry to the basement and the general
12 layout of the basement?

13 A. Yes, sir.

14 Q. And were those photographs true and accurate of the
15 basement as you saw it that night on November 30?

16 A. Yes, sir.

17 MR. CONDER: Your Honor, at this time the United
18 States would move to admit and publish Government's
19 Exhibit 4-15 consecutive through 4-27.

20 THE COURT: Any objections?

21 MS. HUCKE: No, Your Honor.

22 THE COURT: Exhibits 4-15 through 4-27 will be
23 admitted and may be published.

24 (Government's Exhibits 4-15, 4-16, 4-17, 4-18,
25 4-19, 4-20, 4-21, 4-22, 4-23, 4-24, 4-25, 4-26,

1 and 4-27 received.)

2 Q. (BY MR. CONDER) So, Mr. Stratmoen, first looking at 4-15,
3 describe for the jury what that is a photo of.

4 A. There we are looking at the entry to the basement that's
5 just south of the kitchen, between the living room and the
6 kitchen area.

7 Q. And 4-16?

8 A. There we're still standing at the top of the stairs and
9 looking down the stairs towards the basement.

10 Q. And 4-17?

11 A. This would be a photo from approximately halfway down the
12 stairs, looking at the landing towards the bottom.

13 Q. And 4-18?

14 A. This would be at the very base of the stairs.

15 Q. And 4-19?

16 A. And then this is standing in the basement, looking
17 backwards towards the stairway going back up into the kitchen.

18 Q. And 4-20?

19 A. This would be looking over towards the northeast corner of
20 the basement. You have the furnace there on the left-hand
21 side and a laundry setup over on the east side, against the
22 east wall of the basement area.

23 Q. And 4-21?

24 A. This is another view looking towards the east wall of the
25 basement.

1 Q. And 4-22?

2 A. This is a view from a little farther back, looking at the
3 southeast corner of the basement.

4 Q. And 4-23?

5 A. Now we're looking at the south wall of the basement.

6 Q. And 4-24?

7 A. And now we're looking at the southwest corner of the
8 basement.

9 Q. And 4-25?

10 A. Looking and rotating just a little bit more towards the
11 north, still looking at the west wall of the basement.

12 Q. And 4-26?

13 A. Standing a little farther back, still looking at the
14 southwest corner of the basement.

15 Q. And 4-27?

16 A. And this is looking over towards -- more towards the
17 northwest corner of the basement.

18 Q. And so if you could, walk through the jury again the --
19 you talked about you got down there. Where did you go when
20 you get down there? Where do you wander around? What are you
21 looking at?

22 A. Initially, on the first basic walkthrough with the
23 investigators, we generally just go down, observing and being
24 very careful to see what we're coming up with, looking around
25 the whole area, seeing what areas are of concern that may have

1 evidence or significant items that need to be paid attention
2 to. We saw that there was obviously more biologics of
3 interest in this particular corner.

4 And then as far as the stage of the investigation,
5 once we get a general overview of what we're dealing with,
6 then we all back out and discuss once more how we're going to
7 approach the scene. As coroner investigators, we then stage
8 and stand by while the law enforcement investigators then go
9 down.

10 And as you can see in this particular picture, there
11 are now some yellow evidence markers. Those are marked -- to
12 mark things that are of maybe significance that need to be
13 paid attention to, maybe collected later. And they're also
14 there for the investigators, especially when we come back to
15 do a recovery, that we're careful not to disturb or alter any
16 of those positions until they can be collected forensically
17 and in a proper evidentiary manner.

18 Q. Thank you. So again, in preparation for testifying here
19 today, did you have an opportunity to review Government's
20 Exhibits 4-28 through 4-41, showing additional photos of the
21 basement?

22 A. Yes, sir.

23 Q. And were they true and accurate of the scene as you saw it
24 that night on November 30?

25 A. Yes, sir.

1 MR. CONDER: Your Honor, the United States would move
2 to admit and publish 4-28 through 4-41.

3 THE COURT: All right. Exhibits 4-28 through 4-41
4 will be admitted and may be published.

5 (Government's Exhibits 4-28, 4-29, 4-30, 4-31,
6 4-32, 4-33, 4-34, 4-35, 4-36, 4-37, 4-38, 4-39,
7 4-40, and 4-41 received.)

8 Q. (BY MR. CONDER) Mr. Stratmoen, first looking at 4-28,
9 what is that a photo of?

10 A. This is a photo looking north in the basement, standing
11 over near the west wall. Looking towards the north, there's
12 an obvious crawl space entrance.

13 Q. And that's zoomed in. Is that what you're referencing as
14 the crawl space?

15 A. Yes, sir.

16 Q. And did you take measurements or do you have a rough
17 estimate as to how wide that door is, how tall it is? How did
18 you open it?

19 A. I did not take measurements of that. I estimate that it's
20 roughly 3 to 4 feet off the floor level. Those sort of
21 measurements are usually not done by our office.

22 Q. And 4-29?

23 A. That would be looking at the table that was near that
24 corner of the basement.

25 Q. And 4-30?

1 A. That would be looking again at the northwest corner of the
2 basement off to the right. The blanket that's hanging
3 directly in the center of the photograph is against the west
4 wall.

5 Q. And in that photograph there, in 4-30, on the left-hand
6 side it seems there's an upright appliance. Did you have an
7 opportunity to find out what that was?

8 A. That is a standard refrigerator.

9 Q. Was it -- did you check it to see if it was a refrigerator
10 or see if it was a freezer?

11 A. I don't recall if it was a refrigerator or a freezer, but
12 we did check it for contents.

13 Q. And do you recall what was in there?

14 A. Some extremely spoiled meat.

15 Q. Next I would show you what's marked as 4-31.

16 A. That is standing now behind the table and looking again
17 towards the northwest corner of the basement.

18 Q. And 4-32?

19 A. A slightly different angle of the same view of the
20 basement.

21 Q. And in that corner -- it would be almost the center of the
22 picture -- the corner of -- the basement corner, it appears
23 there's stuff on the wall and on the blanket. Is that what
24 you were referencing earlier when you talked about
25 biologicals?

1 A. Yeah. That would be a good example of what we saw that
2 was concentrated more in this corner of the basement. We
3 refer to it as biologics because it appears to be blood, but
4 our office does not do the testing to determine whether it
5 actually was or not. But it certainly looks like human blood.

6 Q. And the next would be 4-33.

7 A. That would be a more close view of that corner.

8 Q. And 4-34?

9 A. That's another closer view of the same corner.

10 Q. And 4-35?

11 A. A little slightly different angle of the same corner,
12 looking more at the blanket that's hanging on the west wall.

13 Q. And 4-36?

14 A. And again a little closer view with a little better view
15 of the possible biologics that are almost towards the very
16 corner of the basement.

17 Q. And 4-37?

18 A. An even closer view of the same view.

19 Q. And 4-38?

20 A. In this picture the blanket that was hanging on the wall
21 is being held away so we can see a little better view on the
22 possible biologics that are in that corner.

23 Q. And, Mr. Stratmoen, looking at this picture where the
24 blanket is lifted up, are you able to identify anything about
25 where that blanket was and the possible biologics on the wall

1 as well as the possible biologics on the blanket?

2 A. Yes. Right here the marker that is labeled 14, there is a
3 smear or a swipe of possible blood that was obscured by the
4 blanket when it was down. And that is generally sort of in
5 relation to what was apparent when the blanket was hanging
6 down. In other words, that swipe is pretty close to what we
7 could see before the blanket was moved.

8 Q. So based upon your training and experience, would you
9 conclude that whatever that is, the biologics put there, were
10 put there when the blanket was hanging down?

11 A. All of what we were observing at that time appeared to be
12 generally of the same age.

13 Q. And next I would show you what's marked as Government's
14 4-38. Oh, I redid it myself. It's Government's 4-39.

15 A. That would be a very close-up view of the northwest corner
16 of the basement.

17 Q. And we'll stop looking at photographs for a minute and
18 we'll start talking about, so you got the call. You hear that
19 there's a body in the house, possibly in the crawl space.
20 You've walked in through the main level, gone down into the
21 basement. Tell us about what happens next, about getting in
22 the crawl space.

23 A. At this point in time, we had not seen a body yet. But
24 just by general observations of the amount of biological
25 matter that we're seeing, especially in that corner of the

1 basement, there's obviously some event that has occurred that
2 is of great concern.

3 Q. And did you keep looking, and what did you find?

4 A. At this point, especially with this photograph that was
5 taken once the markers had been set out for the cautionary
6 areas, the next procedure then would have been to search out
7 and try and locate actual remains.

8 Q. And did you do that? Did you search out and actually
9 locate some remains?

10 A. Yes, we did.

11 Q. And where did you go? What did you do? What did you see?

12 A. At this point we made preparations to enter the crawl
13 space. The initial report was that that was the location of
14 the body, although we had not entered it yet. And in order to
15 do that, even from our first initial entry into the house, we
16 were all wearing protective boots. In order to enter the
17 crawl space, we then put on protective Tyvek coveralls. And
18 of course the entire time we're in the house, we're wearing
19 gloves. And then once it was determined that we were going to
20 go in there, then myself, one of my deputies, and Special
21 Agent Justin Kempf entered the crawl space.

22 Q. And if you could, tell the jury what happened when you
23 entered the crawl space. First tell us, what's it like inside
24 the crawl space? How's the floor? How tall is it?

25 A. The crawl space beneath -- that's beneath the single-level

1 section on the north side of the home, I estimate it's roughly
2 4 to 4 1/2 feet from floor to the joists. There's a lot of
3 utilities and piping and that sort of stuff along the ceiling.
4 There's an uneven, unpaved dirt, gravel, some cement floor.
5 It's filled with an enormous amount of debris, trash, personal
6 property, other things like that. During my initial look and
7 once that entryway was opened, I could not observe a body just
8 from looking in the wooden entrance.

9 Q. And again, in preparing to testify here today, were you
10 able to review Government's Exhibits 4-42 through 4-45,
11 showing the crawl space?

12 A. Yes, sir.

13 Q. And were those true and accurate depictions of what you
14 saw on November 30?

15 A. Yes, sir.

16 MR. CONDER: Your Honor, the United States would move
17 to admit 4-42 through 4-45.

18 MS. HUCKE: No objection.

19 THE COURT: Exhibits 4-42 through 4-45 will be
20 admitted and may be published.

21 (Government's Exhibits 4-42, 4-43, 4-44, and
22 4-45 received.)

23 Q. (BY MR. CONDER) Mr. Stratmoen, first looking at 4-42,
24 could you describe that to the jury.

25 A. This would be the view once the entryway panel is lifted

1 up. Looking directly into the crawl space, you can observe a
2 certain amount of trash of obvious different ages that are
3 scattered about in there. Over to the right-hand side there's
4 a blue-green Samsonite suitcase that is open and unfolded.
5 And then along the bottom edge of the entryway on the cinder
6 blocks, there's a considerable amount of biologic material.

7 Q. And then Government's Exhibit 4-43.

8 A. This would be a close-up view of the probable biologics
9 that we saw on the entryway going into the crawl space. It's
10 notable that there was enough of an amount there at some point
11 in time to dribble out towards the front.

12 Q. And is that the highlighted area in that photograph?

13 A. Yes, sir.

14 Q. Okay. Referencing next Government's Exhibit 4-44.

15 A. This is looking a little bit farther and over to the east.
16 You get a little better view of that Samsonite suitcase that I
17 noted earlier. You can see the cement bases of the supports
18 for the floor joists and get a little better idea of the
19 confined space that we would have to be working in.

20 Q. And next, Government's Exhibit 4-45.

21 A. This is a closer view of some of the materials that were
22 on the floor of the crawl space.

23 Q. And then if we could, we'll stop looking at photos for a
24 while and just discuss. So once you're in there, you've
25 lifted the crawl space door. You've looked around, and from

1 the outside you can't see a body; is that correct?

2 A. Right.

3 Q. And then so what do you do? You can't -- with your
4 flashlight looking in there, what do you do next?

5 A. Well, the next thing we obviously have to do is to climb
6 inside and start looking among the debris to see what we can
7 find.

8 Q. And what did you find? What did you do?

9 A. Once I got in there, while nothing was apparently visible,
10 there was a considerable more amount of materials that was
11 piled over towards the east side. Once I moved the Samsonite
12 suitcase, I could see a boot.

13 Q. And what kind of boot?

14 A. A general work-type boot.

15 Q. And what did that tell you? What did you think when you
16 saw the boot?

17 A. Well, that definitely indicated that there was the
18 possibility of a body then under the debris. So then we
19 entered the area and started working around uncovering what
20 may be under the materials that we saw.

21 Q. And if you could describe to the jury, what did you remove
22 and what did you see, each layer? If you recall, once you
23 removed it, what did you see?

24 A. Of the three of us that were in there, I moved in the
25 farthest into the crawl space. And there was a considerable

1 amount of layering of materials on where the body might be. I
2 assigned my deputy to take photographs at that time of the
3 process as we started uncovering things and then very
4 carefully started peeling back the layers. There was carpet.
5 There was some old blankets. There was plastic. And then the
6 more we uncovered, then we could start to see that there was
7 an actual human body concealed underneath all the debris that
8 we found in there.

9 Q. And if you could, once you found -- well, let me back up.

10 In preparation for trial, were you able to review
11 Government's Exhibits 4-46 through 4-51?

12 A. Yes, sir.

13 Q. And were those true and accurate of the scene that you saw
14 that night on November 30?

15 A. Yes, sir.

16 MR. CONDER: Your Honor, the United States would move
17 to admit Government's Exhibits 4-46 through 4-51.

18 MS. HUCKE: No objection.

19 THE COURT: All right. Exhibits 4-46 through 4-51
20 will be admitted and may be published.

21 (Government's Exhibits 4-46, 4-47, 4-48, 4-49,
22 4-50, and 4-51 received.)

23 Q. (BY MR. CONDER) Mr. Stratmoen, looking at 4-46, could you
24 describe for the jury what that is.

25 A. That view is looking towards the east side of the crawl

1 space. The south wall that's between the open part of the
2 basement and the crawl space is seen on the right-hand side of
3 the photo. And this is the sort of materials that were
4 covering the body as they were initially found.

5 Q. And --

6 A. Over to the left, that's my knee in a Tyvek suit over
7 there as I'm getting ready to start peeling back the layers.

8 Q. And then 4-47?

9 A. That's just a close-up view of the top layer.

10 Q. And 4-48?

11 A. That is a view of the boot that I observed once I removed
12 the Samsonite suitcase and a little closer-up view of that.

13 Q. And 4-49?

14 A. Here is we're starting to just initially uncover. You can
15 see that there's not only a boot but we're seeing the bottom
16 of a pair of jeans, which indicates that the boot is
17 definitely attached possibly to human remains.

18 Q. And 4-50?

19 A. Just another view of the same.

20 Q. And 4-51?

21 A. A little angle differently of the same view with a little
22 bit more uncovered, showing a pair of jeans and part of a leg.

23 Q. Thank you. Again, we'll stop looking at photographs for a
24 minute and discuss. So once you've pulled all of these layers
25 off, what do you find? What do you see?

1 A. When we got down to a certain point, we did discover that
2 the body was covered with a white powdery material. At that
3 point, not knowing what the substance was, as far as those
4 sort of things I'm familiar with, it could be anything at that
5 point. We thought maybe it might be industrial lye, which is
6 used in farm and ranch areas to accelerate biological
7 degradation in privies and outhouses.

8 That material especially, since it was unknown, could
9 be caustic. It could be a hazard. So we took a pause for a
10 moment and made sure we all got breathing masks on to try and
11 prevent any powdery materials from being inhaled, because that
12 stuff is not good, depending on what it is, since it was
13 unknown at the time.

14 Q. And so once you addressed the precautionary measures for
15 this powder, could you describe to the jury, what was the
16 position of the body? What was the condition? How was it
17 clothed? What did you see?

18 A. Once we got the layers all peeled back and found and had a
19 good view of the position of the body, the body was lying
20 parallel to that south wall of the crawl space. The floor in
21 that area was uneven, but the body was at a slightly head-down
22 angle, facedown. And there were signs of obvious trauma. And
23 so then the next step that we would do is to try and examine
24 the body in the position as it is, as best we can, prior to
25 attempting any recovery.

1 Q. And so upon your examination of the body as is, what were
2 you able to determine? What did you examine?

3 A. We had an obvious deceased. There were injuries that were
4 observed. The preparations were made for the recovery at that
5 point.

6 Q. Okay. And again, in preparation for testifying here
7 today, were you able to review Government's Exhibits 4-52
8 through 4-57?

9 A. Yes, sir.

10 Q. And were those true and accurate depictions of what you
11 saw that night?

12 A. Yes, sir.

13 MR. CONDER: Your Honor, the United States would move
14 to admit and publish 4-52 through 4-57.

15 MS. HUCKE: No objection.

16 THE COURT: All right. Exhibits 4-52 through 4-57
17 will be admitted and may be published.

18 (Government's Exhibits 4-52, 4-53, 4-54, 4-55,
19 4-56, and 4-57 received.)

20 Q. (BY MR. CONDER) First, Mr. Stratmoen, we'll look at 4-52.
21 Would you describe to the jury what that is.

22 A. This is another view of -- as we're uncovering, we've
23 removed several layers, including the plastic, as you see
24 there. There remains one more layer of carpet. The Tyvek'd
25 and gloved person that you see over to the left-hand side of

1 the photo is me. And you can also see the white powdery
2 material that we observed covering the body at that time and
3 the top of the jeans.

4 Q. And 4-53?

5 A. Now the carpet that was in the previous photo has been
6 removed, and you have a little bit better view of the amount
7 of powder that was covering the body when we discovered it.

8 Q. And did you notice anything once you got this far in
9 uncovering the layers? Were you able to identify any injuries
10 at the time or --

11 A. There was an obvious injury seen in this photo to the
12 upper arm. And in observing that, in my experience that
13 appears to be a postmortem injury.

14 Q. And what do you mean, "a postmortem injury"?

15 A. A postmortem injury means that the injury, the laceration
16 or whatever injury it is, probably occurred most likely after
17 death.

18 Q. And how are you able to tell that?

19 A. When we're looking at injuries, injuries that occur at or
20 before the time of death have obvious bleeding, and also there
21 will be a certain perfusion of blood into the tissues around.
22 Depending on how long before death, there will be a certain
23 amount of discoloration or bruising. At least on initial
24 examination, this particular injury did not appear to be
25 associated with any external bleeding and appeared more to be

1 where some sharp object cut the tissue and it is simply
2 separated. So the presumption in those cases, pending further
3 examination, is that this is possibly a postmortem,
4 after-death injury.

5 Q. And next looking at Government's 4-54.

6 A. That's a closer-up view of the positioning of the
7 deceased's hand and right arm, which was folded underneath him
8 and coming out to the left side, and also the degree of powder
9 that had been poured on top of the body.

10 Q. And next, 4-56 -- or 4-55?

11 A. This is a view looking more lengthwise along the body.
12 And there are several things that are observable when we first
13 uncovered the body in this, notably the inconsistent lividity.

14 Q. And what do you mean by that? What is lividity, and what
15 is inconsistent lividity?

16 A. Lividity is -- the medical term is rigor mortis. We refer
17 to this as lividity. Once after death and the heart has
18 stopped pumping, the blood in the tissues tends to settle to
19 the lowest point due to gravity. It'll -- say a person is
20 lying in one position. That'll mean that obviously it'll head
21 towards the lowest point. The external sides and tissues will
22 take on a reddish or a purplish coloration, almost like the
23 level of water in a bathtub, as -- you know, to show the
24 lowest point versus the highest point.

25 Lividity tends to set after three to six hours. In

1 other words, if the body is not moved, that blood in the
2 tissues becomes sort of permanently fixed. If a body is
3 recently dead and we find it and you see the coloration of
4 lividity on the lower portions positioning of the body and you
5 push your fingers into it, it'll blanch out and refill. If
6 you push your fingers on it and it doesn't blanch out, that
7 means it is what we call set or fixed, which means that on
8 average the body has been deceased for around three to six
9 hours.

10 Those figures are very temperature dependent. Heat
11 tends to accelerate the body processes after death. Cooler
12 temperatures tend to slow them down. But it does give us a
13 range of idea as far as how long after death we may be
14 discovering a body and observing it.

15 In this case, in this photo you can see lividity is
16 to the upper portion of the body. You can also see down
17 towards the line of the pants and the underwear there that
18 there is a definite absence of coloration from where the belt
19 line was. And what happens is that if a body is moved after
20 lividity has set, the lividity tends to stay in the position
21 it was fixed at.

22 So this immediately told me when we uncovered the
23 body, that the body had been moved from one place to another,
24 or at the very least it had been flipped, that the body was
25 deceased long enough lying on its back for lividity to fix.

1 At the time that lividity fixed, the pants were up. So this
2 definitely tells us that -- and it's one of the things that we
3 look for as a standard part of investigation, is to look at
4 the lividity to determine if the body had been moved at all
5 between the time of death and the time that we discover it.
6 And in this case it -- there's unquestionable lividity that's
7 on the top side, the opposite of the place it should have been
8 seen if the person had died in this position.

9 Q. And next we'd look at Government's 4-56.

10 A. This is a picture looking at the facedown upper body, the
11 T-shirt. There's a black T-shirt that is pulled up. The left
12 hand is obviously folded up that way, and again another view
13 of the amount of powder that was placed on the body.

14 Q. And next, 4-57?

15 A. Once we had documented and observed everything we could
16 with the body in the position that it was found, then we
17 brought in a body bag, laid it out, and proceeded to flip the
18 body over onto its back into the body bag. And then this
19 particular picture is looking at the position where the face
20 was, and there is an obvious area of probable blood at that
21 location.

22 Q. And based upon that probable blood, are you able to make
23 any determinations about -- or opinion about whether that body
24 was killed there or brought there or any opinions on that?

25 A. The human body has about 5 liters of blood in it, and with

1 the amount of trauma to the blood -- or to the body and the
2 amount of bleeding that would have occurred, especially with
3 the body being in a slight head-down angle, if the body had
4 been killed in this position and in this place, you would have
5 seen a lot more here. And especially in conjunction with the
6 amount that we were seeing in the northwest corner of the
7 basement, our presumption and our conclusion, together with
8 the lividity that -- issues that we were seeing, was that the
9 body was probably killed outside of the crawl space and moved
10 into this area at some later time period.

11 Q. And so we'll stop looking at photographs for a minute.
12 Once you roll the body over, you have the body bag there, what
13 do you see? What do you notice?

14 A. There was obvious massive and dramatic trauma to the face
15 and neck of the deceased. Again, with the amount of trauma
16 that we were seeing, the smaller area of blood was
17 inconsistent with those injuries having occurred at that
18 specific location. When you see injuries of that nature, one
19 of the things that we're trying to do as coroners is to
20 determine the manner of death. We now are at a point where we
21 have obviously not a suicide, obviously not an accident. And
22 so we have more positive information that this is definitely a
23 homicide.

24 Q. And based upon your observations of -- if you could
25 describe to the jury what you notice of the face, head, neck

1 area.

2 A. There were massive blunt-force and sharp-force injuries
3 that caused a tremendous amount of distortion to the face.
4 Specifically, we usually leave the generalized and specific
5 descriptions to the forensic pathologist, but there was
6 obvious massive trauma. The -- throughout this whole
7 investigation, we had been hopefully working towards that this
8 maybe was the subject of a missing person that had been
9 missing for about a week. That individual I had seen photos
10 of. The trauma to the face and the neck was to such a massive
11 degree that there was no way at that time that we could
12 determine who this person was. So for our purposes from this
13 point on until positive identification could be made, we
14 considered it a John Doe.

15 Q. And I will -- Mr. Stratmoen, I'll have you refer to your
16 screen and look at what's marked as Government's Exhibit 4-58.
17 And are you familiar with that? What is that?

18 A. Yes, sir. That is a picture once we have rolled the
19 deceased over, looking at the face and neck, mostly towards
20 the left side. And you can see the amount of trauma and
21 disfiguration that we observed.

22 Q. And is that photo a true and accurate depiction of what
23 you saw on November 30, 2017?

24 A. Yes, sir.

25 MR. CONDER: Your Honor, the United States would move

1 to admit and publish 4-58.

2 MS. HUCKE: No objection.

3 THE COURT: Exhibit 4-58 will be admitted and may be
4 published.

5 (Government's Exhibit 4-58 received.)

6 Q. (BY MR. CONDER) And again, if you could describe to the
7 jury what you are looking at.

8 A. What we're looking at is we have some sort of sharp-
9 force -- in other words, cutting -- injuries to the neck.
10 They are extremely deep. There is a good amount -- even with
11 the amount of blood and disfiguration, you can see there's a
12 certain amount of bruising and discoloration to the face. The
13 features are distorted. And this photo is an obvious example
14 of why we considered this person a John Doe at this point.

15 Q. And next I would move next to Government's Exhibit 4-59.
16 Were you able to review that photograph as part of your
17 preparation for testimony here today?

18 A. Yes, sir.

19 Q. And was it true and accurate?

20 A. Yes, sir.

21 MR. CONDER: Your Honor, the United States would move
22 to admit 4-59.

23 MS. HUCKE: No objection.

24 THE COURT: All right. Exhibit 4-59 will be admitted
25 and published.

1 (Government's Exhibit 4-59 received.)

2 Q. (BY MR. CONDER) Could you describe for the jury what
3 that's a photo of.

4 A. That is a little closer view of the face of the subject.
5 There is obvious distortion to the facial structure, the
6 facial features. We're seeing possible both blunt-force and
7 sharp-force injuries.

8 Q. And next, do you recall reviewing Government's 4-60 and
9 4-61?

10 A. Yes, sir.

11 Q. And were those true and accurate photos of what you saw on
12 the night of November 30?

13 A. Yes, sir.

14 MR. CONDER: Your Honor, the United States would move
15 to admit and publish 4-60 and 4-61.

16 MS. HUCKE: No objection.

17 THE COURT: Exhibits 4-60 and 4-61 will be admitted
18 and may be published.

19 (Government's Exhibits 4-60 and 4-61 received.)

20 Q. (BY MR. CONDER) First I would have you look at 4-60.
21 Could you tell the jury what that is.

22 A. That is a photograph that was taken at more of a
23 straight-on angle to the face.

24 Q. And 4-61?

25 A. And that is a little closer photograph of the damage to

1 the neck tissues.

2 Q. All right. And we'll stop looking at photographs for a
3 while. Mr. Stratmoen, you indicated you couldn't identify
4 this body. You said it was a John Doe. Were you eventually
5 able to identify who it was?

6 A. Yes, we were.

7 Q. And how did you go about doing that? What did you do?

8 A. As far as the missing persons report goes, one of the
9 features that the family had described of the individual was
10 that he was missing a portion of an ear from an injury some
11 years ago. So we did note on examination at this time that
12 this individual was missing a portion of an ear. That is not
13 considered positive identification, but it at least is a
14 presumptive bit of evidence that can lead us to what we need
15 to obtain to try and find a positive identification.

16 In this case, later on our office obtained medical
17 records on Mr. Dodge. We obtained dental records on
18 Mr. Dodge. Fortunately for us, Mr. Dodge had a dental exam in
19 the same month earlier, so we had a very good set of dental
20 records and x-rays to compare postmortem, or after death, to
21 this person that we are working with.

22 And based on the medical records and some surgeries
23 that he had had, an ankle reconstruction and plate placed, and
24 11 points of comparison between his previous dental records
25 and what we saw at the autopsy and on dental exam, and the

1 smaller items like the missing portion of the left ear, we
2 were forensically able to positively identify this as Charles
3 Dodge.

4 Q. Thank you. Do you recall -- on November 30 when you --
5 when you found Mr. Dodge, do you recall what he was wearing
6 and the condition of his clothes?

7 A. The condition of the clothes was in disarray a bit. On
8 the front portions there was a certain amount of probable
9 biologics. When we found him in the crawl space, the T-shirt
10 had been pulled up. The jeans had been pulled down. As noted
11 previously, we could tell that originally when the body had
12 been deceased for a while, the jeans were probably up because
13 of the lack of coloration from where the belt line pressure
14 was. He had boots on. And --

15 Q. And did you notice anything, any injuries to other parts
16 of his body, the torso, other parts of the body?

17 A. Yes. There were multiple injuries that were observed to
18 the arms, the chest. Our procedures at this point were, as in
19 most cases when the coroner's office has a death, we take them
20 to our morgue to do a thorough, extensive external exam, draw
21 toxicology, and that sort of thing.

22 But the procedures in any suspicious death is that we
23 recover them as intact and undisturbed as possible. So while
24 we observe injuries, we do not clean the body. We do not
25 remove anything. We leave the clothes as they are. We put

1 them into a body bag, seal it with an evidence seal at the
2 scene, and secure it for transport for autopsy so everything
3 is as undisturbed as possible when the forensic pathologist
4 opens that evidence seal and starts the autopsy exam.

5 Q. And in speaking of that, before you were able to identify
6 Mr. Dodge by his teeth and other means, did you look -- make a
7 cursory look and see if there was a wallet or personal items
8 that would identify him?

9 A. Normally in a regular case, we would check the pockets.
10 The coroner is responsible for anything that is found on or
11 with the body. In this case, since we're treating it as a
12 John Doe, I made just a cursory patdown of the pants to see if
13 there was a wallet or an ID. We did not find anything at that
14 time.

15 Q. Thank you. Again, in preparation to testify here today,
16 were you able to look at Government's Exhibit Numbers 4-63
17 through 4-66?

18 A. Yes, sir.

19 Q. And were those photos true and accurate of what you saw on
20 the night of November 30?

21 A. Yes, sir.

22 MR. CONDER: Your Honor, the United States would move
23 to admit 4-63 through 4-66.

24 MS. HUCKE: No objection.

25 THE COURT: Exhibits 4-63 through 4-66 will be

1 admitted and may be published.

2 (Government's Exhibits 4-63, 4-64, 4-65, and
3 4-66 received.)

4 Q. (BY MR. CONDER) Mr. Stratmoen, first looking at 4-63, if
5 you could tell the jury what that is.

6 A. This is a photo from after we had rotated the body onto
7 its back. And it's still in the crawl space, laying on the
8 body bag, and it is a photograph of the right side of the
9 deceased.

10 Q. And 4-64?

11 A. This is a photograph of the deceased in the body bag. In
12 this case, this would have been after we had managed to remove
13 him from the crawl space and laid it on the floor, where we
14 did one more set of photographic documentation before we
15 actually closed and sealed the bag. And it shows the lower
16 portions of the legs and the jeans and how they are down,
17 pulled down a bit.

18 Q. And 4-65?

19 A. This is a view from the other side, looking at the same
20 thing, showing a little bit more of the body as a whole.

21 Q. And 4-66?

22 A. This would be another view of the lower legs and boots.

23 Q. And next we'll move along and talk about, so once you got
24 the body in the body bag, what do you do?

25 A. Once we have finished with our final documentation, which

1 is mostly at this point photography, then the body bag is
2 closed. We use an evidence seal on the zippers to seal it.
3 It's marked. And then we remove it from the location into the
4 coroner vehicle and transport it to our morgue in Lander,
5 where it is secured in our coroner morgue pending arrangements
6 for autopsy.

7 Q. And did you deliver this body to autopsy?

8 A. Yes. In this case I personally went with my deputy and
9 transported the body to Loveland, Colorado, where our contract
10 pathologist resides and does his work, and was there for the
11 opening of the bag and the autopsy procedure.

12 Q. So did there come a time as the Fremont County coroner did
13 you issue a death certificate in this matter?

14 A. Yes, sir.

15 MR. CONDER: And I would at this time move to admit
16 4-67, the death certificate in this matter, Your Honor, and
17 move to admit and publish.

18 MS. HUCKE: No objection.

19 THE COURT: Exhibit 4-67 will be admitted and
20 published.

21 (Government's Exhibit 4-67 received.)

22 Q. (BY MR. CONDER) So again, Mr. Stratmoen, you mentioned
23 yesterday, but if you could refresh the jury, what is a death
24 certificate? What are we looking at here?

25 A. Okay. Death certificates are issued and filed with the

1 Department of Health Vital Records. They are the official
2 certification of a death that is either signed off by a
3 physician or the coroner. In the case of a suspicious or
4 nonnatural death, it has to be certified by a coroner. And
5 this in particular, this is the certificate of death that was
6 filed for Mr. Charles Joseph Dodge, III.

7 Q. And looking at that it provides information. When it says
8 on there -- I think there's a spot for time of death. What
9 does that mean?

10 A. Time of death is listed on this certificate as unknown.
11 Generally the time of death, especially in coroner cases, we
12 do not have the luxury that a physician does on an attended
13 death of being there at the time of death. So our time of
14 death is determined by the investigation, by interviews.
15 Basically you only can know the time of death if it is
16 observed.

17 From that point, we talk in terms of ranges.
18 Depending on the evidence, maybe I can determine that the time
19 of death occurred at such and such a time plus or minus a few
20 hours. In the case of Mr. Dodge, the only evidence we had at
21 the time of certification is we knew when he was last seen
22 alive and we know when he was found. We know from the
23 evidence, like the rigor and the lividity of the body, that he
24 had been dead when we found him for better than 48 hours due
25 to the condition of the body, in our experience.

1 But that still left us a range of days. And when you
2 cannot determine it down to a specific time frame within 24
3 hours, then the time of death will be unknown, and the date of
4 death will be referred to as the date found.

5 MR. CONDER: Thank you.

6 May I have one moment, Your Honor?

7 THE COURT: You may.

8 (Discussion off the record.)

9 Q. (BY MR. CONDER) Mr. Stratmoen, one last thing. As the
10 Fremont County coroner, were you able to -- or do you recall
11 issuing a death certificate for Mr. Lonestar Addison?

12 A. My chief deputy actually issued that death certificate.

13 MR. CONDER: Your Honor, at this time the United
14 States would move to admit Government's Exhibit 4-68.

15 THE COURT: Any objections?

16 MS. HUCKE: No objection.

17 THE COURT: Exhibit 4-68 will be admitted and may be
18 published.

19 (Government's Exhibit 4-68 received.)

20 MR. CONDER: Your Honor, the United States has no
21 further questions of Mr. Stratmoen.

22 THE COURT: All right. Cross-exam. Ms. Hucke.

23 CROSS-EXAMINATION

24 BY MS. HUCKE:

25 Q. Good morning. So you were testifying a little bit about

1 the process you use to determine when someone died. And in
2 this case it's safe to say that he had been dead when you were
3 there for at least 48 hours; correct?

4 A. That would be a good realm of scientific certainty, yes.

5 Q. Okay. And you -- the only other information that you have
6 to determine from -- 48 hours from when he was reported
7 missing would just be that time frame?

8 A. Correct.

9 Q. And there were no indications that you saw by observing
10 the body that would give you any more information to narrow it
11 down within those days; is that correct?

12 A. No. Like I say, we knew when he was last seen alive or
13 reported to have been seen alive, and we know when we found
14 him. We can go back a little bit, but he had been missing, I
15 believe, for a little -- a week or a little better. So you're
16 still talking about a several-day period where he could have
17 died at any point of that time.

18 Q. Okay. And are there some factors that come into play
19 which could make a body decompose faster or slower?

20 A. Yes. The processes that occur after death are extremely
21 environmental and temperature dependent. The -- for example,
22 if it's summertime and temperatures are 90 degrees, the
23 processes are accelerated. If the temperatures are below
24 freezing, the processes are slowed down. The processes do
25 continue to occur at a rate even in a temperature such as the

1 morgue cooler, which we keep it at about 40 degrees.

2 And based on the environment when I was at the scene,
3 I would estimate that that was approximately -- based on the
4 weather at the time of that time of year and the fact that the
5 heater in the house was working, crawlspaces beneath a house
6 generally average about 40 degrees as a standard. So we're
7 looking at an above-freezing time frame to at least use for
8 our estimates on time of death.

9 Q. Okay. But you have no real way of knowing -- from when he
10 was reported until about 48 hours until you were there,
11 knowing when he passed away?

12 A. No.

13 Q. You had testified that when you first uncovered the body,
14 that there was an obvious injury; correct?

15 A. Yes.

16 Q. And that injury was on, I think, the back bicep of the
17 left arm?

18 A. Yes.

19 Q. And it appears to you that that injury occurred after the
20 person had passed away?

21 A. It appeared that way, yes.

22 Q. And I know that you testified as far as viewing the face
23 that there was lots of disfigurement. Did you view the face
24 and neck at any time from when you sealed the body bag in the
25 crawl space to then when you were at the pathologist's morgue?

1 A. No. Once the bag is sealed, then it does not get unsealed
2 until the pathologist opens it at autopsy.

3 Q. Okay. And you sealed the bag while you were in the crawl
4 space?

5 A. We sealed the bag just right outside the crawl space,
6 after we finished our final photographing documentation.

7 Q. Okay. So you really had a short period of time to view
8 the head and the neck from being in the crawl space and then
9 removing the body?

10 A. Yeah. We were -- we were probably in the crawl space for
11 a good two to three hours, so we had considerable time to look
12 at it. But I -- I don't know what you would call a lot, but
13 we did get a good look and photographed it.

14 Q. And when you were reviewing the neck, were you able to
15 determine if any of those injuries happened after death?

16 A. No. As far as the facial and the head injuries go, as I
17 noted before, we do not clean the body or do any detailed
18 handling or manipulation or examination at the scene before we
19 seal it. We're basically just doing photographic
20 documentation. The detailed analysis of the injuries is left
21 to the forensic pathologist.

22 Q. But you could tell and it seemed very clear to you that
23 this person had died and was lying on their back for some
24 period of time after they died?

25 A. I can't say exactly how long he was on his back. I just

1 can say that it was a range of probably three to six hours,
2 because that is the average time for lividity to set, before
3 he was moved and then flipped over on -- to be facedown.

4 Q. How many people did it take for you to actually remove the
5 body from the crawl space?

6 A. In the crawl space there was Agent Kempf from the FBI,
7 myself, and my deputy. For the most part, the three of us
8 managed to get it to the point where we could exit that
9 opening, and then there's other people on the outside that
10 maneuver it out that opening and then onto the floor once we
11 are out there.

12 Q. And so your experience of really taking several people to
13 remove the body from the crawl space, do you think it would be
14 unlikely that one person would be able to throw a body into
15 the crawl space on their own?

16 A. Judging by the weight and the size, I would say it's
17 probably highly unlikely that one person could have positioned
18 that body in that crawl space.

19 MS. HUCKE: Okay. Can I just have a moment, Your
20 Honor?

21 THE COURT: You may.

22 (Discussion off the record.)

23 MS. HUCKE: We have no further questions.

24 THE COURT: All right. Redirect, Mr. Conder?

25 MR. CONDER: Just a few questions, Your Honor.

1 REDIRECT EXAMINATION

2 BY MR. CONDER:

3 Q. Mr. Stratmoen, I just want to be clear. When you said
4 that from the time you found the body on November 30, looking
5 back, based on rigor and lividity, it's 48 hours plus;
6 correct?

7 A. Yes, sir.

8 Q. But you you're not saying 48 hours from the 30th is when
9 he was killed? It's just at least that point to the last time
10 he was seen?

11 A. Yeah. We're just looking at an outside range of from what
12 we can tell from the physical condition of the body, we can go
13 back and know that the body had been dead for a certain amount
14 of time but not specifically between the last time he was
15 seen. We can't narrow it down any farther than that.

16 Q. And so in looking at lividity and rigor, that's what
17 you're able to do. Are there others who can use other
18 techniques to determine timing?

19 A. What we base our conclusions on is the standard time
20 frames. Rigor, for example, releases and completely
21 disappears from the body in 36 to 48 hours. Again, that's
22 temperature dependent. So if you come upon a body that is
23 totally relaxed and rigor is gone, you can say that you're
24 looking at the body has been dead at least 48 hours, or
25 probably two days. That in conjunction with the other factors

1 is where we establish the ranges that we're talking about.

2 Q. And with regards to lividity, if an individual was --
3 passes away, if an individual dies, they go facedown, they're
4 facedown for a while, and then they go onto their back and
5 they stay on their back, where will lividity set if they're
6 only on their face for an hour and then they're put on their
7 back?

8 A. If, say, somebody collapses and is lying on the floor,
9 once the heart stops, lividity starts because the force of
10 gravity starts to appear and work towards the lower portions
11 of the body almost immediately, because the heart is not
12 pushing things in the circulation anymore.

13 If lividity has not set -- say the body is discovered
14 after one to two hours, maybe three hours, depending on
15 temperature -- and you turn the body, lividity will then shift
16 and remove itself from where it was to again toward -- seek
17 the lowest portions of the body. And that's why once it
18 sets -- the body continues to have fluids. Fluids move. The
19 decomposition process is ongoing. Fluids still move within
20 the body. It's not like everything freezes. We're just
21 talking about lividity, which is mostly a surface
22 manifestation of the soft tissues.

23 Once that sets, for example, even at autopsy, which
24 occurred a couple days after we were at the scene, the
25 lividity may fade a little bit, but you can still see the

1 posterior lividity even after the body had been sitting face
2 up for a while. In other words, things still move a little
3 bit, but once it sets, it stays for quite a while in the
4 position that it's set at.

5 Q. And in mentioning -- in this case you indicated you took
6 the body down to Loveland, and the pathologist did the
7 autopsy. Without going too much into it, what does the
8 forensic pathologist do, just generally? As a general
9 overview, what steps does he take? What actions does he take?

10 A. Generally the forensic pathologist is a physician that is
11 certified in that specialty. What they will do is at that
12 point in time, especially in a nonnatural case like this and a
13 suspicious death, they will document everything as they see it
14 once the bag is open. Then they proceed to methodically
15 examine the body. They examine what the clothing is. They
16 will then remove the clothing. In this case all of the
17 clothing was kept by the FBI's evidence.

18 And then they once again look at the body and analyze
19 and document all the injuries and specifics. Then they clean
20 the body to get a good unobstructed view of the injuries,
21 document things again, and start to analyze the various
22 injuries versus as to are they blunt-force, are they
23 sharp-force injuries? Sharp force would be like a knife edge.
24 Blunt force could be any object that strikes things, anything
25 that's a blunt object.

1 And they're also looking at the totality of the
2 injuries and the condition of the body to see what is the
3 cause of death. They are working for us in order to give us
4 an extreme detailed analysis of the various injuries, and
5 which especially in this case, since there were so many
6 injuries, which of those injuries is possibly the fatal
7 injury. Is it the lacerations to the neck? Is it the
8 blunt-force trauma to the head? Is it a combination? But
9 they will define it down and in great detail, sometimes being
10 able better to associate antemortem, or before death, injuries
11 versus postmortem injuries.

12 They'll then do an internal examination of the body.
13 They'll open up the skull and examine the brain to see if
14 there are injuries from the outside that pass into the inside.
15 Is there some sort of a natural process that is contributing?
16 Like, for example, just because a person falls down the
17 stairs, did they actually die of a heart attack rather than
18 from the fall? And they help us define exactly what the
19 manner and cause of death is.

20 Q. And as part of that autopsy, did they take any -- draw any
21 blood, do any toxicology?

22 A. Yes. If it was not a suspicious death, our office does
23 the toxicology. In a suspicious death, especially, or any
24 death that requires an autopsy, the pathologist then obtains
25 the toxicology samples and runs them along with the other

1 testing that he does.

2 MR. CONDER: No further questions, Your Honor.

3 THE COURT: All right. Thank you. May this witness
4 be released from any subpoenas?

5 MR. CONDER: Yes, Your Honor.

6 THE COURT: Ms. Hucke?

7 MS. HUCKE: Yes, Your Honor.

8 THE COURT: Sir, you may step down. You're free to
9 go.

10 THE WITNESS: Thank you.

11 MR. CONDER: Your Honor, the United States would next
12 call Dr. Palmer.

13 MS. AMRAM: Could we take a bathroom break?

14 THE COURT: We'll go ahead and take a five-minute
15 recess.

16 Ladies and gentlemen of the jury, I'll remind you of
17 the recess instruction.

18 Please rise.

19 (The jury exited the courtroom at 9:58 a.m.)

20 (The following took place outside the presence of the
21 jury.)

22 THE COURT: Any matters we need to address before we
23 resume, Mr. Conder?

24 MR. CONDER: Your Honor, the only -- the United
25 States would submit to the Court that the parties have a joint

1 stipulation on the various trial matters, and I would submit
2 that to the Court. It's been signed by the United States --
3 oh, and, Counsel, we'll get --

4 MS. AMRAM: Oh, sorry.

5 THE COURT: All right.

6 MR. CONDER: And we'll submit that to the clerk, Your
7 Honor.

8 THE COURT: Anything else, Ms. Amram?

9 MS. AMRAM: No, Your Honor.

10 THE COURT: All right. We'll stand in recess for
11 five minutes.

12 (At 9:59 a.m., a recess was taken until 10:09 a.m.)

13 (The following took place outside the presence of the
14 jury.)

15 THE COURT: Thank you. I note the presence of
16 parties, presence of counsel, absence of the ladies and
17 gentlemen of the jury.

18 Anything we need to address before we go to the next
19 witness? Mr. Conder?

20 MR. CONDER: Nothing.

21 MS. AMRAM: Your Honor, I just --

22 (Reporter interruption.)

23 MS. AMRAM: I had asked your clerk if we need to
24 renew our objection to Ms. Moss, if we had a standing
25 objection or not.

1 THE COURT: And you will have a standing objection as
2 to the designation issues. In terms of any foundational
3 issues or as in terms of any grounds in terms of the opinions
4 offered, you'll have to make those as they arise.

5 With regards to experts, that reminds me. You may
6 elicit expert opinions after you lay the foundation, but I'm
7 not going to recognize them as an expert per se. And if there
8 are objections, then I'll expect the opposing party to make
9 objections as to their opinions. As I read the rules of
10 evidence, the Court is not required to and I don't want to put
11 an imprimatur that says, "Yes, this is an expert on such and
12 such." So I'll allow the parties to object if they believe
13 that expert is not qualified.

14 We'd go ahead and bring in the ladies and gentlemen
15 of the jury.

16 (The jury entered the courtroom at 10:12 a.m.)

17 THE COURT: Thank you. Please be seated.

18 The United States may call its next witness.

19 MR. CONDER: Thank you, Your Honor. The United
20 States would call Dr. Robert Palmer.

21 THE COURT: Dr. Palmer will come forward and be
22 sworn.

23 (The witness was sworn.)

24 THE COURTROOM DEPUTY: Please state and spell your
25 name for the record.

1 THE WITNESS: My first name is Robert, standard
2 spelling. Middle name is Bruce, B-R-U-C-E. Last name is
3 Palmer, P-A-L-M-E-R.

4 THE COURTROOM DEPUTY: Please state your occupation
5 and your city of residence.

6 THE WITNESS: I'm a clinical toxicologist, and I live
7 in Greeley, Colorado.

8 ROBERT BRUCE PALMER, GOVERNMENT'S WITNESS

9 DIRECT EXAMINATION

10 BY MR. CONDER:

11 Q. Good morning, Dr. Palmer.

12 A. Good morning.

13 Q. What is a clinical toxicologist? What does that mean?

14 A. A clinical toxicologist deals with poisonings, overdoses,
15 snake bites, things like that in a clinical setting. That is,
16 we care for people who -- we actually provide patient care for
17 people who have suffered those incidents. And then in
18 addition to that, we also deal many times with postmortem
19 results, results that involve sampling and measurement of
20 various drugs and compounds in the body after death.

21 Q. And so that's what a clinical toxicologist does. What
22 does a plain old toxicologist do?

23 A. Well, there are a lot of different types of toxicologists.
24 Some of them deal with environmental issues and are called
25 environmental toxicologists. Some of them -- for example, the

1 classic forensic toxicologist is an individual who works in a
2 laboratory in a medical --

3 (Reporter interruption.)

4 A. Sorry. 60 with gusts to 90. A forensic toxicologist
5 typically works in a laboratory analyzing samples from a
6 medical examiner's office. They don't generally have patient
7 contact. A developmental toxicologist may deal with how
8 various chemicals and such affect the development of the
9 fetus, whether it's in an animal model or people. So there
10 are a number of different types of toxicologists.

11 THE COURT: Good job. Thank you, Doctor.

12 Q. (BY MR. CONDER) And what type of schooling did you obtain
13 to become a toxicologist?

14 A. That was a long and storied career there. I completed a
15 bachelor's degree in chemistry with a minor in music
16 performance at the University of Idaho. Went on to graduate
17 school at the University of Washington in Seattle, where I
18 completed a master's and a Ph.D. in organic medicinal
19 chemistry, which is basically the chemistry of how drugs do
20 what they do.

21 Following that I did a postdoc in medical school at
22 the University of Washington on opioid pharmacology and
23 medicinal chemistry. After that I went to the University of
24 New Mexico as professor in the medical school and pharmacy
25 school for several years and then in 2000 moved Colorado and

1 completed another postdoctoral fellowship in clinical
2 toxicology. At the completion of that fellowship, I sat for
3 the board examination and became board certified in clinical
4 toxicology.

5 Q. So how long have you been working as a toxicologist?

6 A. I worked for about a year on staff at the Rocky Mountain
7 Poison Center in Denver and then moved into private practice
8 about 13 years ago -- or excuse me -- 16 years. So it's been
9 about 17 years that I've been a toxicologist full-time.

10 Q. All right. And have you ever taught a -- taught
11 toxicology-related topics?

12 A. Oh, yes, yes. I -- while I was on the faculty at the
13 University of New Mexico, I was a faculty in the toxicology
14 division. And even now every spring -- or excuse me -- every
15 fall semester I teach a clinical toxicology course for the
16 doctor of pharmacy students at the University of Wyoming. I
17 still maintain a faculty appointment at the University of
18 Colorado in the School of Medicine and teach residents and
19 toxicology fellows, doctors that have completed their training
20 and are working to become toxicologists, and residents,
21 usually in emergency medicine and pediatrics as well.

22 Q. And are you a member of any professional organizations or
23 boards or committees to be a toxicologist?

24 A. I am, several of them. There's the American Board of
25 Applied Toxicology, and I sat on their board of directors for

1 two elected terms. Then there is the American Academy of
2 Clinical Toxicology, which is the largest clinical toxicology
3 organization in the world. And my -- I was on the board of
4 directors or board of trustees for that, and then for the past
5 two years I was the elected president of that organization.

6 Q. And have you ever written any articles or books with
7 regard to toxicology, chemistry?

8 A. I have. I've published about 50 or so peer-reviewed
9 papers in scientific and medical journals. And between
10 authoring chapters, editing books, coauthoring books, things
11 like that, about two dozen or so book authors.

12 Q. And do you have any patents?

13 A. I have three patents that were granted having to do with
14 tumor imaging, and I have one that's pending having to do with
15 a device used to wash chemical contaminants out of the eyes.

16 Q. And, Dr. Palmer, I'd direct your attention to the screen
17 and what's marked as Government's Exhibit 5-1.

18 A. My screen's blank, sir.

19 Q. It'll come up.

20 A. Okay. Yes.

21 Q. And are you -- what is that?

22 A. That is the first page of my CV.

23 Q. And is that true and accurate?

24 A. It is.

25 MR. CONDER: Your Honor, at this time the United

1 States would move to admit Government's Exhibit 5-1.

2 MS. HUCKE: No objection.

3 THE COURT: All right. No objection. That was
4 Ms. Huckle.

5 Q. (BY MR. CONDER) Dr. Palmer, if you could --

6 THE COURT: I'm sorry. I was trying to --

7 Ms. Bowline is having a hard time seeing who is speaking over
8 there so I wanted to announce who it was. Exhibit 5-1 will be
9 admitted.

10 (Government's Exhibit 5-1 received.)

11 MR. CONDER: I apologize, Your Honor.

12 THE COURT: My fault.

13 Q. (BY MR. CONDER) Dr. Palmer, if you could explain to the
14 jury, what does a toxicologist have to do with measuring or
15 looking at drugs and alcohol in a person's system?

16 A. Well, my role is primarily interpretive. That is, there's
17 a laboratory that does the analysis and produces the results,
18 and then my job is to interpret those results to determine
19 whether they were perhaps causative or contributory to the
20 cause of death or whether the results are consistent with the
21 history of what took place, a variety of things like that.
22 But my role is more interpretive than analytical. I don't do
23 the actual analysis.

24 Q. And if you could, describe to the jury in general terms
25 the nature and impact of alcohol intoxication on a person's

1 physical capabilities or abilities.

2 A. Sure. When an individual drinks alcohol, as the blood
3 alcohol increases, I think we all know the extent of
4 intoxication gets worse. So there's a parallel between the
5 rising blood alcohol and rising intoxication. The types of
6 effects that alcohol has I'm sure we've all seen before.
7 People begin to slur their speech, have difficulty balancing,
8 have difficulty with fine motor skills. Obviously many have
9 difficulty driving if that happens. And again, as the blood
10 alcohol increases, the -- those effects tend to get worse.

11 In someone who has a very heavy drinking history,
12 many times blood alcohol that would dramatically affect
13 someone who is alcohol naive, a nondrinker, they can have a
14 much higher blood alcohol if they're tolerant to the alcohol
15 and still not look as drunk.

16 Q. Okay. And what about marijuana? What -- could you
17 describe the general nature and impact of marijuana on a
18 person.

19 A. Sure. When someone uses marijuana, it can affect a
20 variety of different systems in the body. It causes a little
21 bit of an increase in heart rate, causes the conjunctiva, or
22 the lining of the eye, to get red and get bloodshot eyes.
23 Some people it reduces anxiety; other people it increases
24 anxiety. Some people it gets rid of nausea and vomiting;
25 other people it causes nausea and vomiting. It certainly

1 causes in many cases disorientation or sometimes even a little
2 bit of a removal from the situation, so people feel like
3 they're maybe not fully part of what's going on around them, a
4 little bit of dissociation.

5 Q. And if you could, a little slower. How are alcohol levels
6 measured in a person's body?

7 A. Alcohol is typically -- I'm going to try and keep this
8 slow. Alcohol is typically measured in blood using a device
9 called a gas chromatograph. And what happens is a sample in a
10 sealed vial is heated, and then that air that's on top of the
11 liquid inside the vial is sampled. It's run through a tube at
12 a specified rate and specified temperature that causes it to
13 separate from everything else and then is detected by a
14 certain type of detector as a peak. And from that the
15 laboratory is able to determine the concentration of alcohol
16 in the blood. And that's called head space -- for sampling
17 that head space above the liquid in a vial, it's call head
18 space gas chromatography.

19 Q. And in laymen's terms, how does a person measure one's
20 alcohol level?

21 A. There are two unit systems that are typically used for
22 measuring blood alcohol. There's the one that we're most
23 familiar with with respect to, for example, DUI legislation,
24 and that's measured in grams per deciliter. So that .08 that
25 everyone refers to as the legal limit, the statutory legal

1 limit for driving, is in grams per deciliter. In the
2 hospital, because we just can't have things be the same, we
3 measure it in milligrams per deciliter. So .08 actually
4 becomes 80. There's a difference of 1,000.

5 Q. And on the street and out of hospital and out of the lab,
6 would someone on the street refer to those numbers as blood
7 alcohol concentration?

8 A. Typically, yes.

9 Q. And with regard to marijuana levels, how are marijuana
10 levels tested and measured?

11 A. Marijuana use is typically determined by measurement of a
12 few different compounds. There's the primary compound which
13 is responsible for the intoxicating effects of marijuana which
14 it -- it is called delta-9-tetrahydrocannabinol. We'll call
15 it THC. THC is usually measured in blood using a similar sort
16 of device to what I described for the gas chromatography
17 except the detector's a little bit different. It uses
18 something called mass spectrometry to measure the exact amount
19 of the compound that's present.

20 There are other compounds which are metabolites of
21 THC that are also typically present when someone has used
22 marijuana. And what a metabolite is, it's just the way the
23 body changes that one compound -- in this case the THC -- to
24 more efficiently get rid of it. Some of those metabolites are
25 active; in other words, they still have some activity. They

1 still cause some effect. Others are not.

2 Q. So would it be safe to say that the delta-THC-9 -- the
3 delta-9-THC level measures a person's intoxication or
4 impairment or -- well, I'll let you explain.

5 A. THC does not follow a direct parallel nearly as well as
6 alcohol does in terms of blood level versus level of
7 impairment. The higher the THC concentration, likely the more
8 impaired you are, but it does not quite match as well as
9 alcohol intoxication or a blood alcohol concentration do. So
10 it's a little bit more variability with each individual.

11 Q. And so when a person consumes alcohol or drugs like
12 marijuana and then they stop consuming, what does the body do
13 with that?

14 A. The alcohol and any other drug -- be it marijuana or
15 anything else -- will be first absorbed into the blood, and
16 then it gets distributed sometimes out into the various body
17 tissues, and then it gets eliminated. Alcohol stays pretty
18 much with what's called total body water, so it stays mostly
19 in the blood, and it's eliminated primarily through the urine.

20 THC is metabolized in the liver, converted into a
21 number of other different compounds. Some of those compounds
22 are eliminated in the urine. That's what we would detect if
23 you were doing, for example, a urine drug screen in an
24 employment capacity. Some of those compounds are eliminated
25 in the bile, and a small amount of that THC actually

1 partitions into what's called adipose tissue, which is
2 basically body fat.

3 Q. So once these chemicals -- alcohol, marijuana -- goes into
4 the system, if a person stops consuming it -- they stop
5 smoking, they stop drinking -- what happens to their levels of
6 alcohol, the BAC level? What happens?

7 A. The BAC level, or blood alcohol concentration levels,
8 declines at quite a predictable rate, and in adults that's
9 usually between 10 and 20 milligrams per deciliter per hour.
10 So if you have somebody with a blood alcohol of 120, which
11 would be .120, it's -- about every hour you're going to lose
12 20 or so out of that 120. So the first hour it would go down
13 to about 100 and then 80 and so on.

14 THC, you have a very high peak as soon as you start
15 smoking. The blood concentration of THC peaks very quickly,
16 usually within about ten minutes of smoking, and then it
17 declines quite quickly. When it comes down, it typically
18 comes down into the single digits -- like 1, 2, 3, 4 range --
19 within about an hour, and then it can hang out at low numbers
20 for a little bit longer than that.

21 Q. And you've mentioned DUIs and BACs. What's a high level
22 for THC, and how is it measured? What's the nomenclature?

23 A. The unit system that is used for THC measurement is
24 nanograms per milliliter. So we're getting into smaller and
25 smaller numbers. But in the state of Colorado, where I live,

1 we do have some legislation that relates to blood THC
2 concentrations while people are driving. It's similar to the
3 per se statute that you have for blood alcohol with the .08,
4 but it's not exactly the same. It's called permissive
5 inference. The difference isn't important. The necessity is
6 that the individual have a blood THC concentration of about
7 5 nanograms per milliliter, is the number that's put forward.

8 The challenge with that is if someone is arrested for
9 driving under the influence of THC, we have that 5 nanograms
10 per milliliter cutoff. THC is eliminated so quickly that many
11 times by the time the suspect is processed and the blood is
12 collected and everything else, that number has dropped down.
13 Even though it may have been above 5 at the time of the
14 arrest, it's now quite a bit lower.

15 Q. So if somebody had -- if a person had their blood tested
16 and their nanograms per milliliter of the delta-9-THC was
17 above 50, what would that tell you in terms of when they last
18 smoked, timewise? Would it be days?

19 MS. HUCKE: Objection, Your Honor, under 702 and 703.

20 THE COURT: Well, I'll sustain as to foundation at
21 this point in time.

22 MR. CONDER: Okay.

23 Q. (BY MR. CONDER) Dr. Palmer, you were talking about
24 measurements of time and THC-9.

25 A. Yes.

1 Q. How is it -- explain how you can determine time when a
2 person smoked and the measurement. How do you go about
3 determining that?

4 A. Well, with the rate of elimination, the speed with which
5 the THC is cleared from the blood, the higher numbers are
6 going to be earlier in the time course of smoking.

7 Q. And why is that?

8 A. Because the THC is very rapidly eliminated from the blood.

9 Q. And based upon your training and experience, why is that?
10 Are you familiar with any studies or any literature that will
11 discuss that and talks about rates of dissipation? Like you
12 said alcohol was 20. What about marijuana, the THC-9?

13 A. Oh, sure. There are -- there are lots and lots of papers
14 that have been published on THC. It's called kinetics, the
15 change in concentration with respect to time. A number of
16 studies that have been published on that. I have several of
17 them in the notebook I walked in with.

18 Generally speaking, if you are smoking marijuana, you
19 have that initial very high peak within about ten minutes, and
20 then you're down well below 20 within the hour. And it will
21 then be a little bit more -- be eliminated slightly more
22 slowly after that.

23 Q. And is there a correlation like, for example, an hour per
24 nanogram per milliliter?

25 A. It's a little different with THC than for alcohol, and it

1 has to do with something called order of kinetics. The amount
2 of alcohol that is eliminated over a given period of time, I
3 gave the number of 10 to 20 milligrams per deciliter per hour.
4 That's what's called zero-order kinetics, and that's a
5 specified amount of drug being eliminated over a specified
6 period of time.

7 Most drugs -- and THC is similar to most drugs rather
8 than alcohol; alcohol's kind of an exception in a lot of
9 ways -- undergo what's called first-order kinetics, where it's
10 not a specified amount that's eliminated over time. It's a
11 percentage of the total amount. And that's where we come up
12 with things -- a term that you may have heard called
13 half-life, which is the amount of time it takes to go from one
14 concentration to half that concentration.

15 Q. So with regard to delta-9-THC levels in a person, if you
16 have someone that you have a measured level of -- for example,
17 let's just say 25 --

18 MS. HUCKE: Objection, Your Honor. I don't believe
19 that the proper foundation has been laid at this point, and we
20 continue the objection under 702 and 703.

21 THE COURT: I'll overrule the objection at this point
22 given the nature of the question. I believe we're going to
23 still foundation issues. Go ahead.

24 Q. (BY MR. CONDER) So, Dr. Palmer, if you could, explain to
25 the jury, you talked about half-life and the kinetics. So

1 just say, for example, somebody has a nanograms per milliliter
2 of 25. First of all, what does that tell you in and of itself
3 when you say that? You look at that and you go what?

4 A. Well, the first thing it tells you is obviously the
5 individual has been exposed to THC, been exposed to marijuana.
6 The 25 would be suggestive of being early in the time course,
7 within the first couple hours, at most, of having been
8 exposed. And there's probably some biological effect.
9 Remember, the permissive inference level for driving in
10 Colorado is 5, and we're looking at 25 in an individual, so
11 there's probably going to be some biological effect.

12 Q. And you've talked about dissipation and dissipation rates.
13 So explain physiologically, if you can, how the marijuana,
14 this THC-9, dissipates. What does it do in the blood? What
15 does it do in the body? How does that leave?

16 A. How does it leave? What happens is the THC is circulated
17 in the bloodstream, and it goes through the liver. All of the
18 blood eventually goes through the liver. There are a series
19 of enzymes in the liver that start to break down that THC,
20 convert it into things that the body can more readily get rid
21 of. That's really the whole point of metabolism, is to
22 convert things into compounds that are more easily dispensed
23 with or gotten out of the body.

24 When it's metabolized, those metabolites that are,
25 created, some of them are going to exit the body in the urine.

1 Some are going to exit the body through the bile, and a small
2 percentage of the THC is going to sort of diffuse out of the
3 bloodstream and into the fat tissues. And when you see some
4 cases about people saying, well, you can test positive for
5 marijuana for a month after you've used it, what you're
6 looking at is actually that really slow leaching of small
7 amounts of that THC from the fat tissue back into the blood,
8 which is a relatively slow process. But the concentrations
9 are quite low.

10 Q. And why the difference between fast release and slow
11 release?

12 A. The fast release is the metabolism while it's in the
13 bloodstream and going through the liver and being filtered
14 into the kidneys and into the urine. That's relatively quick.
15 The slow release is that leaching of that proportion of the
16 THC that went into the fat back into the bloodstream, where it
17 then undergoes the same elimination rate or same elimination
18 processes that the other THC did. It's just that that
19 leaching of that small amount from the fat back into the blood
20 is slow.

21 Q. So based upon your training and experience, how many times
22 have you measured -- looked at a THC level, nanograms per
23 milliliter --

24 A. Milliliter.

25 Q. -- and determined -- tried to gauge timing, timing with

1 regard to consumption of marijuana based upon the test level
2 results?

3 A. That's a frequent question. That comes up all the time,
4 particularly in Colorado. I mean, we get to deal with that a
5 lot. Usually it's in cases of driving impairment or somebody
6 who was injured as either a driver or a pedestrian.

7 Q. And in those cases how do you go about determining what --
8 so if, for example, a person was stopped driving and their
9 nanograms per milliliter was a .7 or a 7 --

10 A. 7 or .7?

11 Q. 7. I apologize. I'm used to the alcohol.

12 A. Yeah.

13 Q. So it's 7. What would you do with that? What do you
14 determine?

15 A. Well, in that circumstance they are above the 5 nanograms
16 per milliliter cutoff. The difference between per se like .08
17 with alcohol and the permissive inference is essentially that
18 the individual who's accused is allowed to try and defend
19 themselves and demonstrate that they were not in fact impaired
20 by that -- that drug, as opposed to alcohol, where if you're
21 .08, you're done. You don't really get to defend that case or
22 prove that you weren't impaired. At 7 they were likely
23 impaired.

24 Q. And when you make that determination and you extrapolate
25 time, trying to determine how fast the THC dissipates through

1 the body, what types of studies do you rely on or types of --
2 going back to your training and experience, what do you reach
3 into to help you make that determination?

4 A. There are a variety of studies on driving and cannabis
5 use. There are a variety of studies on dosing and kinetics as
6 far as THC is concerned. A lot of the studies demonstrate
7 that even if you're below, say, that 5 nanogram per mill
8 cutoff, that impairment persists quite a bit longer than that.
9 It's just that this -- that's what the legislature decided to
10 use. But most of the -- or a number of the studies are
11 sponsored by the federal government -- National Highway
12 Traffic Safety Administration, the National Institutes of
13 Health -- as well as other academic and public researchers.

14 Q. So based upon your training and experience, relying on
15 these studies, generally, could you describe if a person was
16 tested and they were above 50 nanograms per milliliter, could
17 you determine was it hours or days when they last consumed
18 marijuana?

19 A. It would have been within hours.

20 Q. You're able to determine toxicology levels -- for example,
21 BAC, THC-9 -- from a dead person?

22 A. Blood alcohol and THC in the blood can be measured in
23 someone who's deceased, yes.

24 Q. And, Dr. Palmer, I'd have you look at your screen what's
25 marked as Government's Exhibit 5-2A.

1 A. Yes.

2 MR. CONDER: Your Honor, at this time the United
3 States would move to admit 5-2A.

4 MS. HUCKE: No objection.

5 THE COURT: Exhibit 5-2A will be admitted and may be
6 published to the ladies and gentlemen of the jury.

7 (Government's Exhibit 5-2A received.)

8 Q. (BY MR. CONDER) Dr. Palmer, what is -- what is that?

9 A. This is a report from NMS Labs, which is a reference
10 laboratory in Pennsylvania, on peripheral blood analyses that
11 were conducted on decedent Mr. Charles Dodge.

12 Q. And in the positive findings, it states, "Ethanol result:
13 156."

14 A. Correct.

15 Q. What does that mean? Turn that into BAC so we can
16 understand it.

17 A. That is blood alcohol using the units that we'd use in the
18 hospital, in health care, the 156. So if we divide that by
19 1,000 to get to the normal set of the units that we're used to
20 dealing with in the public sector, that's .156, which is shown
21 on the next line down on the lab sheet.

22 Q. And you said that the rate of dissipation for alcohol is
23 standard, .02 -- or not -- .2 -- or 20?

24 A. 20, .02.

25 Q. I'm sorry. So, for example, just hypothetically, a 156,

1 after an hour what would that generally be, not all the time?

2 A. Yeah. And there is going to be a little bit of
3 variability. People are who less experienced drinkers tend to
4 be a little bit slower than that. People who are very heavy
5 drinkers may eliminate alcohol somewhat faster than that. But
6 in general, if you're looking at a .156 one hour later, it
7 should be around .13, .136.

8 Q. Thank you. And the next three lines, it talks about first
9 11-hydroxy-delta-9-THC. What's that?

10 A. 11-hydroxy-delta-9-THC is a metabolite of THC. It's
11 something that's created from THC in the liver, and it is one
12 of the active metabolites. So it does have some of the
13 effects that parent THC has on the body. And it's actually
14 pretty close to as potent as parent THC itself, but there's
15 generally not all that much present. Usually it's about
16 10 percent of the amount of THC.

17 Q. And the next one, delta-9-carboxy-THC?

18 A. Delta-9-carboxy-THC, sometimes referred to as THC acid, is
19 an inactive metabolite. That's the one that we typically
20 measure in urine for, like, drug employment screens and things
21 like that.

22 Q. And does that measure the relative high on that one?

23 A. The result for that one was 61 nanograms per milliliter.
24 It doesn't determine biological effect in terms of whether or
25 not the individual is high because it's pharmacologically

1 inactive. It doesn't do anything.

2 Q. And finally, the last one, the delta-9-THC, what does that
3 result state?

4 A. That result states that it's greater than 50 nanograms per
5 milliliter.

6 Q. And so again, the delta-9-THC, is that what we've been
7 talking about, the measuring of the intoxicating effect of
8 marijuana essentially?

9 A. It is.

10 Q. And when that says "over 50" does that mean it could be 51
11 or 65 or 75?

12 A. It could be 51, 65, 75, 200. It's just greater than 50.
13 The lab did not quantify it more specifically than that.

14 Q. And with regard to a delta-9-THC level of greater than 50
15 in Mr. Dodge's body, are you able to determine or make an
16 opinion about when the last time was he consumed marijuana?
17 Was that days ago or hours ago?

18 MS. HUCKE: Objection, Your Honor, under 702 and 703.

19 THE COURT: All right. Ladies and gentlemen of the
20 jury, I'm going to excuse you for a minute. There's a legal
21 issue that I need to address that doesn't concern you, but
22 it's going to take a moment, so I'm going to go ahead and let
23 you have a recess. I'll remind you of the recess instruction.
24 You'll be right back here in a moment.

25 Please rise.

1 (The jury exited the courtroom at 10:47 a.m.)

2 (The following took place outside the presence of the
3 jury.)

4 THE COURT: Go ahead and have a seat.

5 So, Counsel, as I understand this, at this point in
6 time, the question here is how insightful is delta-9-THC as to
7 time of consumption. I don't see it as to time of death. But
8 let me -- Ms. Huckle, any cross-exam that you wish to do
9 foundational at this point in time I'll allow you to do to
10 point out the arguments regarding admissibility.

11 CROSS-EXAMINATION

12 BY MS. HUCKE:

13 Q. And so with a cutoff of over 50, you just previously
14 stated you have absolutely no way to determine what exactly
15 the level was; is that correct?

16 A. That's true, yes.

17 Q. So you'd stated the level could be 200, it could be 61, it
18 could be any number above 50?

19 A. That's correct.

20 Q. And so is there a cutoff where a number is so high that --
21 is there actually a cutoff number or can that just -- if
22 someone just smokes a lot of pot in one sitting, can that go
23 to, like, 1,000?

24 A. I don't know that I've ever seen one personally that's
25 1,000, but I've certainly seen them into the several hundred

1 range.

2 Q. Okay. And is there a point where the level could be so
3 high that it's actually toxic or could cause death to a
4 person?

5 A. That's really -- a really interesting question. The
6 likelihood of death from just exposure to marijuana alone in
7 the absence of anything else -- and I'm not counting, for
8 example, somebody being high and involved in a traffic
9 accident or something like that. But just death due to the
10 THC alone, that's highly, highly unusual. The only place
11 where I've seen an individual with THC concentrations so high
12 that death was really a concern was in babies who had gotten
13 into edibles, toddlers who had gotten into edibles and we
14 needed to intubate -- put them on a ventilator -- to support
15 their respiratory function.

16 Q. So how much marijuana would need to be consumed for
17 someone to reach a level of 50?

18 A. Not -- not a great deal depending upon the timing. Is it
19 okay if I talk with my hands for just a minute? As the blood
20 concentration goes up, it reaches a peak and then comes down
21 again. So if you are smoking just a regular joint, let's say
22 that you had a peak concentration of 150. You could have had
23 a 50 on the way up; you could have a 50 on the way down.

24 Q. Okay. So there's no really good way of knowing how much
25 marijuana someone had smoked or consumed when you look at a

1 level, like, above 50?

2 A. Not really. We can't really determine the dose. But with
3 a -- the dose is really less important from a clinical
4 standpoint.

5 Q. But in a situation where someone consumed a very large
6 amount of marijuana and their levels could be over 200 at some
7 point, there's no way that you could tell how much was
8 consumed as far as the levels based on this finding?

9 A. In terms of the dose, that would be very hard to determine
10 for a specific individual. You know, you may be able to say
11 that if a group of people also smoked exactly the same
12 concentration THC joints, then you could have, you know, a
13 mean with some standard errors on it. But they do fluctuate a
14 little bit for an individual. It is difficult to establish a
15 specific dose for an individual.

16 Q. Okay. And so how would you calculate a time of death of
17 four to six hours in this case?

18 A. I wasn't actually calculating a time of death. My comment
19 was that the blood THC in an individual who is smoking -- and
20 we'll just use a living person throughout this example -- goes
21 up and then comes back down. When it comes back down, it's
22 down quite low -- into the single digits -- within about two
23 to three hours. So down three, four, five, something like
24 that.

25 That clearance stops if someone dies. So they're no

1 longer eliminating the drug once they're dead because the
2 blood's not circulating through the liver. It's not being
3 metabolized. It's not be distributed. So someone who has a
4 THC concentration of greater than 50 nanograms per milliliter
5 and is dead, that would be suggestive of earlier rather than
6 later in proximity to the -- to the time of smoking.

7 Q. And what factors affect how quickly someone could
8 metabolize the THC?

9 A. Well, there are a number of them. It doesn't seem to be
10 as affected by dose. In other words, if you use a large dose
11 first and a lower dose, the peak with the large dose will be
12 higher, but the elimination is about the same rate. Enzyme
13 activity could explain some variability. In some people the
14 relative body fat may affect it as well.

15 But in general, there's not a great deal of
16 fluctuation in terms of the elimination rate. The fluctuation
17 is typically in the peak concentration; in other words, how
18 high they go. Experienced smokers tend to be more efficient
19 as far as the efficiency of smoking is concerned than somebody
20 who is a novice. So an experienced smoker oftentimes will
21 have somewhat higher concentrations than a novice smoker.

22 Q. And you said enzyme activity would be a factor.

23 A. Yes.

24 Q. Could you explain that.

25 A. Sure. Not -- most of us humans have pretty much the same

1 enzymes, but because of our various genetic makeups, some
2 people's enzymes work a little faster than others' do. Some
3 people have less efficient enzyme activity than others. So if
4 the enzyme activity is more efficient, that would mean it
5 would -- it would munch up the THC much more quickly.

6 Q. What factors would give someone efficient enzymes as
7 opposed to enzymes that aren't as efficient?

8 A. That's genetics.

9 Q. And does -- the environment that someone's in, could that
10 also be a factor?

11 A. I suppose if you looked at something that would decrease
12 blood flow to the liver, then you could have a situation where
13 the drug would be cleared less quickly. Somebody who has lost
14 a lot of blood and is no longer having as much blood flow
15 through the liver could do it; obviously somebody who's dead,
16 where there's no blood flow through the liver. Somebody who
17 is profoundly hypothermic, I could postulate there might be
18 some decrease in metabolism because blood flow through the
19 liver has slowed.

20 Q. So if someone who is hypothermic, that would mean they
21 were cold. So if they're cold, that could slow down the
22 amount that -- the time that it would be processed out?

23 A. It -- true, but not cold like walking across the street
24 this morning cold, cold like pathologically hypothermic, as in
25 somebody's who's fallen through the ice into the river in the

1 middle of winter, very, very cold.

2 Q. If someone was injured, could that be a factor?

3 A. It could, particularly with profound blood loss.

4 Q. So having profound blood loss would be a factor that would
5 actually slow down the rate of the body metabolizing the THC?

6 A. It could, but it's not -- it's going to -- it's not going
7 to create any more THC; it's just going to cause it to not be
8 eliminated.

9 Q. And if somebody had an injured liver and their liver
10 wasn't functioning properly, that could be a factor as well?

11 A. I'm not sure -- are you talking about someone with a
12 disease like hepatitis, or are you talking about someone with
13 a traumatic injury to the liver? I'm not sure what you're --

14 Q. I guess both, if somebody has a disease or they have
15 trauma to the liver.

16 A. I'm not sure that a disease -- an infectious disease like
17 hepatitis would necessarily affect the kinetics. In terms of
18 an injury, if we're talking about something that reduces blood
19 flow to the liver, I think that would be the primary issue.

20 MS. HUCKE: Okay. Can I just have a moment, Your
21 Honor.

22 THE COURT: You may.

23 (Counsel confer.)

24 Q. (BY MS. HUCKE) And have you had the opportunity to review
25 the autopsy report in this case?

1 A. I have.

2 Q. And so you're aware that Mr. Dodge suffered severe
3 injuries?

4 A. He did.

5 Q. And so I'm going to give you a hypothetical. If you have
6 someone who is beaten severely, who is still alive but is in
7 40-degree temperature, could that be a situation that would
8 slow the rate of the metabolizing?

9 A. It would slow it maybe to some extent, but it's not going
10 to eliminate it.

11 Q. But it would slow it?

12 A. Perhaps a little, yes.

13 (Counsel confer.)

14 Q. (BY MS. HUCKE) And so what -- in those factors, in that
15 situation, what would the rate be? You said it would be
16 slower, so what would be the rate?

17 A. I can't give you a definitive number on that because with
18 the hypothetical, there are obviously a lot of variables. The
19 important point with respect to that, though, would be that
20 there would likely be residual concentrations on the low end
21 that would still be present. But as long as there's still
22 blood going through the liver, that metabolism is still going
23 to take place, and you're still on the order of, you know, a
24 couple hours.

25 Q. Okay. What studies have you reviewed to back up that

1 opinion?

2 A. Sure. How would you like -- do you want me to hand you
3 this or just read them?

4 Q. You can read them.

5 THE COURT: If you would identify the title of any
6 learned treatise you rely on.

7 A. There is a study in pigs by a French group. The first
8 author's name is Brunet, B-R-U-N-E-T, and the title of the
9 paper is "Postmortem Redistribution of THC in the Pig."
10 That's in the *International Journal of Legal Medicine* from
11 2010.

12 There is another paper by Marilyn Huestis -- that's
13 H-U-E-S-T-I-S -- called Blood "Cannabinoids I Absorption of
14 THC and Formation of 11-Hydroxy-THC and THC Acid During and
15 After Smoking Marijuana." There is another paper -- oh, I'm
16 sorry. That is in the *Journal of Analytical Toxicology*, 1992.

17 There is a paper by Karschner, K-A-R-S-C-H-N-E-R,
18 called "Do Delta-9-THC Concentrations Indicate Recent Use in
19 Chronic Cannabis Users?" That's in *Addiction*, 2009. And
20 there are a few others as well.

21 Q. (BY MS. HUCKE) So going back to the pig study, what was
22 the methodology that they used, and what were the findings?

23 A. The findings were that they had a series of 15 pigs, and
24 they dosed them with THC -- it was given intravenously. There
25 are obvious limitations for a smoking study with pigs. But it

1 was given intravenously. The kinetics are about the same as
2 with smoking. You have a high peak and then a rapid decline.

3 They let the THC equilibrate in the pigs for two
4 hours. The pigs were then sacrificed and the concentrations
5 of the various constituents measured. The results were that
6 they were able to demonstrate that the kinetic profile in
7 living pigs was very similar to the kinetic profile in living
8 humans for THC. They also demonstrated that the -- there was
9 some difference in concentration between the various analytes
10 when the pig was dead versus when the pig was alive, a
11 phenomenon called postmortem redistribution.

12 MS. HUCKE: Okay. Can I just have a moment, Your
13 Honor?

14 THE COURT: You may. While you're taking that
15 moment -- well, go ahead.

16 (Counsel confer.)

17 Q. (BY MS. HUCKE) So, Dr. Palmer, with these studies that
18 you cited --

19 A. Yes.

20 Q. -- where in any of these studies did they address the rate
21 at which THC would be metabolized for someone who's been
22 severely injured, who's in 40 degrees, who was -- is there any
23 studies that directly address that rate?

24 A. Directly addressing that issue, there are not. That's
25 based on what happens to liver blood flow during trauma, in my

1 education, experience, and dealing with other compounds in a
2 similar fashion.

3 (Counsel confer.)

4 Q. (BY MS. HUCKE) And, Dr. Palmer, I know that you are a
5 Ph.D., but you're not an M.D., a medical doctor?

6 A. I'm not.

7 Q. Where in your training and experience do you have about
8 liver trauma?

9 A. 35 years as a paramedic and board certification in
10 clinical toxicology.

11 Q. But you're not a medical doctor?

12 A. No, I'm not.

13 (Counsel confer.)

14 Q. (BY MS. HUCKE) Okay. And I understand that you have
15 training as a paramedic, but as a paramedic, you don't get
16 training on liver trauma?

17 A. Sure we do.

18 Q. You get training on the effects of trauma to the liver?

19 A. We get training on massive blood loss regardless of what
20 the issue is. And if that's a lacerated liver, then that can
21 certainly be the case.

22 Q. Can you explain that training as far as the effects on the
23 body for trauma -- of trauma to the liver.

24 A. Oh, sure. When an individual suffers something like a
25 lacerated liver and -- or massive blood loss, blood pressure

1 drops, heart rate goes up, and they enter a condition that we
2 would refer to as hypovolemic shock. When that happens, the
3 body shunts the blood flow to the vital organs -- the brain,
4 kidneys, and heart -- in order to maintain vital functions at
5 the expense of other less vital organs at that time.

6 Q. So what would be the methodology in a case as I asked
7 previously of the rate at which THC is metabolized in the body
8 for someone who has been severely injured, is in 40-degree
9 weather -- temperature, and is still alive for a prolonged
10 period of time?

11 A. That would be a difficult -- obviously, that would be an
12 impossible study to do in a human for, you know, a variety of
13 ethical and legal reasons. But it probably could be done in
14 an animal model. I've not seen it done. I was working with
15 the hypothetical that you provided.

16 The amount of decrease in metabolism is going to be
17 related to the amount of decrease in blood flow through the
18 liver. So if you have somebody who is -- has been injured and
19 the blood flow has decreased a small amount, there's not going
20 to be that great a difference in the metabolism. If, on the
21 other hand, you have someone who has been so severely injured
22 that the blood flow is almost zero through the liver, they're
23 not going to live very long.

24 THE COURT: I'm going to cut to the chase on this. I
25 understand where you're going.

1 EXAMINATION

2 BY THE COURT:

3 Q. But, Doctor, let me ask you a couple of questions. And
4 I'm going to oversimplify this, and forgive me.

5 A. Yes, sir.

6 Q. Is there a limit or a standard level of saturation that
7 human beings can take? In other words, is there at -- after
8 smoking a joint, or whatever the heck you want to call it, is
9 there a set or determined saturation level that that person
10 will have uniformly?

11 A. Saturation, are you talking about --

12 Q. The level of delta-9-THC.

13 A. It depends on the amount of THC in the joint that was
14 smoked. But the peak is typically on the order of 75 to 200,
15 250.

16 Q. And in this, alls we know is it's above 50 in this case?

17 A. Correct.

18 Q. Are there variables that affect that saturation rate of
19 delta-9-THC from human to human?

20 A. There are. Smoking efficiency is one. The -- obviously
21 the quality of the marijuana that's used. That with higher
22 THC concentration will give higher THC concentration in the
23 blood.

24 Q. And I understand as you look at it, there is a -- based
25 upon kinetics and half-lives, there is a standard rate of

1 reduction of the delta-9-THC from a human being after
2 consumption?

3 A. It -- there are actually two of them, but yes.

4 Q. But they vary?

5 A. Right. The first one is -- and I'm afraid I'm going to
6 have to talk with my hands.

7 Q. Go ahead and use your hands.

8 A. When the peak goes up and comes down, it's a very steep
9 decline with that first part. Then there's the slower decline
10 that I talked about with the leaching of the THC coming back
11 in from the fat.

12 Q. After you get below 5 nanograms?

13 A. Right. That's much -- a much shallower slope, so that
14 elimination is much longer. When people refer to elimination
15 half-life of THC and use numbers of 24 or 36 hours, they're
16 referring to what's called the beta elimination half-life,
17 which is that real shallow piece at the end, not the steep
18 part at the beginning, which is called the alpha elimination
19 rate.

20 Q. But there is no set saturation rate for human beings? In
21 other words, there's no -- everybody that smokes, no matter
22 how much you smoke, if you're tested 30 minutes after that,
23 you're going to be at 200 nanograms of delta-9?

24 A. Yeah, it doesn't work quite that -- it doesn't correlate
25 quite that well in reality.

1 Q. All right. And as I understand it, have you ever -- well,
2 let me back up before I forget this thought. The postmortem
3 on the pigs in 2010, they gave a dosage to those pigs that was
4 a set and identified amount of dosage; correct?

5 A. They did.

6 Q. So you knew what their blood concentration level was at
7 the beginning?

8 A. Yes.

9 Q. And then you could correlate at the end what the blood
10 concentration of THC-delta-9 was?

11 A. Right.

12 Q. We don't have that here, do we?

13 A. Correct.

14 Q. In terms of the -- well, have you ever offered an opinion
15 or been allowed to offer an opinion as to time of death based
16 upon THC-delta-9 levels in relationship to consumption of
17 marijuana?

18 A. I -- with respect, Your Honor, I don't think that's what
19 I'm doing today.

20 Q. Well, I guess what -- let me state what I understand that
21 you're offering, and then you can tell me how I'm
22 misinterpreting it.

23 A. Sure.

24 Q. As I understand it, given the nanograms of greater than 50
25 in Mr. Dodge's blood at the time of the toxicology, which

1 would reveal the level at the time of death that his body quit
2 processing --

3 A. Yes.

4 Q. -- you would opine that he had consumed marijuana within a
5 relatively short period of time -- short, as in hours -- prior
6 to being deceased because of the level of delta-9-THC is above
7 5, it -- we know it's above 50 but we don't know how far above
8 50 --

9 A. Right.

10 Q. -- that peak that comes down from consumption. And so
11 your opinion would be that we know that he smoked marijuana
12 within a relatively short period of time before he died?

13 A. Correct.

14 Q. All right. But factors that go into that would be where
15 that peak was in terms of the quality of the THC that he'd
16 consumed and the amount he consumed; correct?

17 A. To the extent that that would define what the peak value
18 was, the rate of decline is still the same. It's still going
19 to be a very, very rapid decline whether you came from 200 or
20 you came from 60. You're still going to be down almost to
21 zero.

22 Q. But it's not like blood alcohol in the sense of every one
23 hour you get a .02 reduction?

24 A. No, it's not. It's an entirely different order of
25 kinetics. The blood alcohol is zero-order kinetics. That's a

1 set amount per unit of time. The THC is first-order kinetics,
2 which is a certain percentage over a unit of time. And that's
3 where we get half-life.

4 Q. But you still have to know what you start at to use that
5 percentage to reduce and determine where you were?

6 A. Other than -- if you want to determine the exact
7 half-life, you'd need at least two points to get the exact
8 half-life in an individual. But regardless of where that peak
9 is, within one to two hours you're going to be down in the
10 very, very low numbers because you're going to be switching
11 from that alpha elimination to that more shallow beta
12 elimination.

13 Q. When you say very, very low numbers, what are you talking
14 about in terms of nanograms?

15 A. In looking at the studies, they were often below 1. It
16 was detectable by the laboratory, but it's, you know, 25, 50
17 times less than what a 50 would be if we were even dealing
18 with a 50 in this case.

19 Q. But we don't know that it's 50 to some number greater than
20 50?

21 A. Right. But regardless of what the peak is -- and it's
22 demonstrated in these studies that regardless of what the peak
23 is, that alpha elimination is so fast that within a couple of
24 hours, you're switching from that alpha curve to that beta
25 curve. And the beta curve is the one with the very low

1 numbers in it.

2 Q. And have you ever offered an opinion or been allowed to
3 offer an opinion as to, based upon the delta-9-THC level, the
4 time frame from which the test was taken or an estimate or
5 opinion as to the length of time that expired between the
6 blood test or in this case death and consumption of THC?

7 A. I've not been asked that specific question before. But
8 the only logical way to interpret that number with respect to
9 the kinetic studies would be that this was in relative close
10 proximity to when the marijuana was used.

11 THE COURT: All right. Anything further, Ms. Huckle?

12 MS. HUCKE: Yes, Your Honor.

13 CROSS-EXAMINATION (RESUMED)

14 BY MS. HUCKE:

15 Q. So, Dr. Palmer, what is the rate of THC dissipation with
16 someone who has massive blood loss?

17 A. That's again going to be determined by how much blood goes
18 through the liver, because that's where the metabolism takes
19 place.

20 Q. So you would have no way of knowing what the rate would be
21 in that situation?

22 A. Other than it would be proportional to whatever the blood
23 flow is, yeah, that's correct.

24 Q. And in the pig study, did they test the dissipation rate
25 in any pigs who had suffered blood loss?

1 A. They did not, not in that particular study.

2 Q. And is there any study out there that tests the rate of
3 dissipation for anybody who suffered physical trauma or liver
4 trauma or blood loss?

5 A. For THC, I've not looked for that specific issue. There
6 are studies that do that for other drugs and demonstrated
7 proportional for -- to hepatic blood flow, or blood flood
8 through the liver.

9 Q. But there's no study that you know of with this situation
10 that gives the rate of dissipation?

11 A. Not that I can give you off the top of my head. I, again,
12 haven't looked for that, but it's basic physiology.

13 MS. HUCKE: Nothing further, Your Honor.

14 THE COURT: Mr. Conder, anything further with regards
15 to that?

16 MR. CONDER: Your Honor, just to hopefully clear up
17 one thing.

18 DIRECT EXAMINATION (RESUMED)

19 BY MR. CONDER:

20 Q. Dr. Palmer, if -- you stated -- the judge asked if you get
21 up to a high level, and you said 250 --

22 A. Okay.

23 Q. So if a person is 250 and another person is 100 --

24 A. Yes.

25 Q. -- would their rates going down be different to get down

1 to the beta level?

2 A. Not appreciably. They'd be roughly the same.

3 Q. And would that be a difference of hours, an hour or two
4 hours?

5 A. Oh, probably less than that.

6 Q. If a person dies, they stop dissipating drugs and alcohol?

7 A. Largely, yes. There can be some movement between tissues,
8 but they're no longer eliminating it. You're effectively
9 stopping a stopwatch at that point.

10 Q. And is it safe to say that if you're injured, that may
11 affect the rate of dissipation, but it will not eliminate
12 dissipation altogether?

13 A. That's correct, yes. As long as there's still some blood
14 going through the liver, it'll still be metabolized.

15 Q. And the rate at which that would be in an injured person,
16 that's still -- that's -- severely injured but still alive,
17 would their rate of dissipation be dramatically different?
18 Would it be on the level of two hours' difference or days'
19 difference, recognizing there may be a difference? But what's
20 the degree of difference?

21 A. Well, it's going to be proportionate to the blood flow
22 through the liver again. If you have somebody who is injured
23 enough to survive for a period of days, I would expect that
24 that alpha phase would still be largely the same. The beta
25 phase might be prolonged quite a bit. If you're talking about

1 somebody who has received such massive injuries that they're
2 going to have almost no hepatic blood flow, that individual is
3 unlikely to live for a period of days without appropriate
4 medical care.

5 MR. CONDER: Your Honor, the United States has
6 nothing else.

7 THE COURT: All right. Well, there are -- first of
8 all, I mean, I think that the issues as to, you know,
9 temperature and blood loss are certainly probative and would
10 go to the issues as to the weight and the impact that might
11 have. But what I fundamentally have a problem with here is --
12 and it may be just simply my lack of understanding and
13 appreciation, but if there was further study that could
14 confirm in terms of, regardless of dosage, a nanogram level of
15 X would always be at that level or below after a period of
16 time.

17 There are too many factors adding in there as well at
18 this time. Based upon the Court's limited knowledge and
19 information, there are too many factors and too many
20 components and a lack of specificity in part on the
21 delta-9-THC test to allow an opinion to be given as to the
22 relative time frame within which marijuana consumption was
23 made by Mr. Dodge relative to his death, whatever time that
24 was.

25 I just don't see sufficient reliability based upon

1 the lack of correlation and testing. So I'll sustain the
2 objection as to any opinion as to the relative time of death
3 related to consumption of marijuana by Mr. Dodge.

4 MR. CONDER: Your Honor, just a clarification. Would
5 the Court permit the United States to ask, upon the jury's
6 return, to discuss timing issues in general, not in relation
7 to Mr. Dodge but the notion that in a living person, somebody
8 testing over 50 nanograms per milliliter would take hours and
9 not days to dissipate that level and leave it at that?

10 THE COURT: Well, he's already testified as to, you
11 know, those issues, so I won't let him go back into that.

12 MR. CONDER: Okay.

13 THE COURT: He can be cross-examined as to impacts
14 that could affect the time of -- issues concerning blood loss
15 and temperature. But he's already in -- I would allow him
16 to -- he's already said that, you know, based upon my careful
17 notes, that that timing would -- levels of certain amounts
18 above 5 or whatnot show fairly recent use, not specific time
19 frame as to use. And that's as far as I would allow.

20 MR. CONDER: Thank you, Your Honor. And may I ask --
21 and I'm not sure where I was, but I don't know that I got into
22 the notion of what I just asked Dr. Palmer now, does
23 dissipation stop upon death.

24 THE COURT: You may ask that. I think that's
25 standard science, and there's certainly no question about

1 that. There's some anomalies, as he noted, but you may ask
2 him about that.

3 MR. CONDER: Okay.

4 THE WITNESS: Your Honor --

5 THE COURT: I'm going to ask you to go ahead and
6 speak with counsel if you want. Let's take two minutes.

7 (At 11:24 a.m., a recess was taken until 11:28 a.m.)

8 (The following took place outside the presence of the
9 jury.)

10 THE COURT: Thank you. I note the presence of the
11 ladies and gentlemen -- counsel and the defendant, absence of
12 the ladies and gentlemen of the jury.

13 Any matter we need to take up before we resume?
14 Mr. Conder?

15 MR. CONDER: Nothing from the United States, Your
16 Honor.

17 MS. HUCKE: No, Your Honor.

18 THE COURT: Go ahead and be seated. Thank you.

19 Let's go ahead and bring in the ladies and gentlemen
20 of the jury.

21 (The jury entered the courtroom at 11:30 a.m.)

22 THE COURT: Thank you. Please be seated. Ladies and
23 gentlemen of the jury, I apologize for the delay. It's my
24 fault. Blame me. I owe you time. I don't know how I'm going
25 to do that, but I'll continue to do what I can.

1 Mr. Conder -- oh, and, defense counsel, make sure you
2 have a microphone right close to you when you make any
3 objections, because they're having difficulty hearing you.

4 Go ahead, Mr. Conder.

5 MR. CONDER: Thank you, Your Honor.

6 Q. (BY MR. CONDER) Dr. Palmer, when we left off, we were
7 talking dissipation rates of blood and alcohol in a human
8 body. If a person dies and previously consumed drugs or
9 alcohol, do they stop dissipating? Does the alcohol and drugs
10 in their system stay what they were when they died?

11 A. They stop eliminating. The actual concentrations of the
12 drugs may change somewhat after death due to the chemical
13 processes that take place in a body after death. Alcohol
14 typically remains about the same. Other drugs can change a
15 little bit in concentration after death.

16 Q. So if a person dies, their BAC, it'll stop absorbing and
17 stop dissipating, and it'll stay what it was when they died?

18 A. Pretty close, yes.

19 Q. If somebody's injured due to trauma, some sort of injury,
20 would their body still eliminate alcohol?

21 A. Yes.

22 Q. And would it matter if they were -- the nature of the
23 injury, would that matter?

24 A. Not much. Alcohol is not eliminated through the liver.
25 That's not the primary route of elimination of alcohol.

1 Q. Where is alcohol eliminated from?

2 A. The kidneys.

3 Q. So as long as a person is still alive, they would be
4 dissipating and eliminating alcohol?

5 A. Yes.

6 MR. CONDER: No further questions, Your Honor.

7 THE COURT: All right. Thank you.

8 Cross-exam.

9 MS. HUCKE: We don't have any questions, Your Honor.

10 THE COURT: All right. May this witness be released
11 from any subpoenas? Mr. Conder?

12 MR. CONDER: Yes, Your Honor.

13 MS. HUCKE: Yes, Your Honor.

14 THE COURT: You may step down. You're free to go.
15 Thank you, Doctor.

16 All right. The United States may call its next
17 witness.

18 MR. CONDER: Your Honor, the United States would call
19 Bernadette Brown.

20 THE COURT: Ms. Brown will come forward and be sworn.

21 (The witness was sworn.)

22 THE COURTROOM DEPUTY: Please state and spell your
23 name for the record.

24 THE WITNESS: Bernadette Brown.

25 THE COURTROOM DEPUTY: And spell it, please.

1 THE WITNESS: B-E-R-N-A-D-E-T-T-E B-R-O-W-N.

2 THE COURTROOM DEPUTY: Please state your occupation
3 and your city of residence.

4 THE WITNESS: Fremont County. I just --

5 THE COURTROOM DEPUTY: And your occupation.

6 THE WITNESS: Housekeeping.

7 BERNADETTE BROWN, GOVERNMENT'S WITNESS

8 DIRECT EXAMINATION

9 BY MR. CONDER:

10 Q. Good morning, Ms. Brown.

11 A. Good morning.

12 Q. You said you lived in Fremont County. In particular,
13 where do you live? Not your address.

14 A. In Riverton.

15 Q. In Riverton. And where did you grow up?

16 A. Ethete.

17 Q. And is that on the Wind River Indian Reservation?

18 A. Yes.

19 Q. And are you an enrolled tribal member?

20 A. Yes.

21 Q. And what tribe are you a member of?

22 A. Arapaho.

23 Q. Any did you grow up on the Wind River Indian Reservation?

24 A. Yes, I did.

25 Q. Where did you go to high school?

1 A. I went to Wyoming Indian Elementary and then Wind River
2 for high school.

3 Q. Thank you. Do you have any children?

4 A. Yeah. I have five boys.

5 Q. Ms. Brown, do you use alcohol?

6 A. Yes, I do.

7 Q. And do you use drugs?

8 A. Yes.

9 Q. You're -- you're not under the influence here today, are
10 you?

11 A. No.

12 Q. Okay. I'm going to go back a little bit, a few years. Do
13 you remember in 2012 getting a DUI conviction in Fremont
14 County?

15 A. Yes.

16 Q. And did that turn into a felony DUI?

17 A. Yes.

18 Q. Are you familiar with the house located at 331 Great
19 Plains Road?

20 A. Yes.

21 Q. And how do you know that house?

22 A. I went to a party there. I partied there.

23 Q. And when did you party there?

24 A. I partied there the past summer and then I partied there
25 again in November. I can't remember the exact date.

1 Q. Did you party there around Thanksgiving in 2017?

2 A. Yes.

3 Q. And when you say you were partying, what were you doing?

4 A. We were drinking alcohol and doing methamphetamine.

5 Q. And who's "we"? Who else was there with you?

6 A. There was me, Arapaho, Tara, Monty Tabaho, BoMatt -- or
7 Matthew Whiteplume, and I can't remember the other person. I
8 didn't really know those -- I didn't really know those people
9 very good. The only one I really knew was Monty and BoMatt
10 and Tara.

11 Q. And when you say BoMatt --

12 A. Bernard Whiteplume.

13 Q. Do you know a Matthew Whiteplume?

14 A. Yeah.

15 Q. All right. And who's Matthew Whiteplume?

16 A. BoMatt.

17 Q. Okay.

18 A. That's what we call him.

19 Q. So you call him Bernard "BoMatt" --

20 A. BoMatt, yeah.

21 Q. -- Matthew Whiteplume?

22 A. Yeah.

23 Q. It's all the same guy with many names?

24 A. Yeah.

25 Q. Do you know an individual named Mr. Charles Dodge or

1 Chucky Dodge?

2 A. Yeah. He was there too. It was the first time I ever met
3 him.

4 Q. When you were partying that night was the first time you
5 ever met him?

6 A. Yeah. I didn't know him before.

7 Q. And you said Arapaho. Arapaho who?

8 A. Oldman.

9 Q. And how do you know Arapaho Oldman?

10 A. I met him before at Dina and Duane Bell's house in Beaver
11 Creek.

12 Q. So you'd met him before this night you were partying?

13 A. Uh-huh.

14 Q. And do you recognize Mr. Oldman here in the courtroom
15 today?

16 A. I don't really see him. No, I don't see him. I can't...

17 Q. And how did you know Mr. Arapaho Oldman?

18 A. I just met him over at Dina and Duane's before, when I was
19 drinking over there.

20 Q. How did you get to know him?

21 A. I don't really know him. I just partied with him.

22 Q. But how did you know his name was Arapaho Oldman?

23 A. Because that's what they -- they introduced me to him.

24 Q. And if you could pull your microphone a little closer.

25 Roll up on your chair there.

1 THE COURT: It'll pull down as well.

2 THE WITNESS: I can't even reach the floor from this
3 chair.

4 THE COURT: If you reach on the right side of that
5 chair, there should be a little lever. If you pull it up --

6 THE WITNESS: Oh, okay.

7 THE COURT: -- you can adjust that if you wish and
8 just stand up and do it.

9 Q. (BY MR. CONDER) So, Ms. Brown, when you indicated you met
10 Arapaho Oldman, how did you know his name was Arapaho Oldman?

11 A. Because they introduced me.

12 Q. And who introduced you?

13 A. BoMatt. But Dina and Duane introduced me before. I see
14 him. I couldn't see before.

15 Q. So is he here in the courtroom today?

16 A. Yes, he is.

17 Q. Could you describe where he's sitting and what he's
18 wearing.

19 A. He's sitting on the left-hand side, and he's got a gray
20 sweater and glasses on.

21 Q. And is -- that gentleman sitting where you just described,
22 is that the Arapaho Oldman you met at the Bells' and partied
23 with around Thanksgiving?

24 A. Yes.

25 Q. Okay. So you were at 331 Great Plains. You're partying,

1 drinking, doing meth with Mr. Whiteplume, Mr. Oldman, Chucky

2 Dodge --

3 A. Chucky.

4 Q. All right. Where were you guys at?

5 A. We were in the basement.

6 Q. Did you start out in the basement, or did you start out
7 somewhere else?

8 A. We were upstairs -- me, Tara, BoMatt, and Monty -- and
9 then we went down to town, came back, and then we went into
10 the basement.

11 Q. And what were you doing in the basement? What was going
12 on down there?

13 A. We were drinking, just visiting, partying.

14 Q. And who was all down in the basement at that time again?

15 A. Me, Arapaho, Monty, Charles. Tara and BoMatt were
16 upstairs, and then Tara left, and BoMatt came by himself.

17 Q. You said Tara left the house --

18 A. She didn't leave. She was upstairs.

19 Q. And Mr. Whiteplume was in the basement?

20 A. Yeah.

21 Q. So in the basement was you --

22 A. Uh-huh.

23 Q. -- Chucky Dodge --

24 A. Yes.

25 Q. -- the defendant, Arapaho Oldman --

1 A. Yes.

2 Q. -- and Mr. Whiteplume?

3 A. Uh-huh.

4 Q. And who else was down there?

5 A. Monty, and there was another girl there. What was her
6 name? I think it was Jessica. Jessica Guffey.

7 Q. Okay. So what happened? What were you guys drinking?

8 A. Vodka, BV.

9 Q. What kind of vodka were you drinking?

10 A. Fleischmann's.

11 Q. Does Fleischmann's go by a nickname?

12 A. I don't know.

13 Q. Is there -- have you ever heard of red cap?

14 A. Yeah.

15 Q. What's red cap?

16 A. Fleischmann's. Monty Tabaho, he had Potter's.

17 Q. So Potter's is red cap?

18 A. Yeah. And then I had blueberry -- the blueberry ales. I
19 had a couple six-packs of that that I brought.

20 Q. What was Mr. Dodge doing? Was he drinking as well?

21 A. Yeah. He was sitting on the side of me, and he was
22 drinking.

23 Q. Was he doing any drugs?

24 A. No.

25 Q. Was he smoking pot?

1 A. Yeah. We were smoking weed and drinking, but he didn't do
2 any of the methamphetamine.

3 Q. Okay. So what happened when you're down in the basement?
4 What are you guys talking about? What's going on?

5 A. Oh, just -- I don't know. I was just talking to Charles,
6 or Chucky, and we were just all drinking, talking to each
7 other.

8 Q. Was everybody getting along?

9 A. Yeah.

10 Q. Did that ever change?

11 A. Yeah, it did.

12 Q. And how did it change?

13 A. Well, Arapaho started being mean to Chucky. And I just --
14 I went upstairs, and the next thing, I came down and they were
15 all fighting. They were all fighting and stuff. Not they,
16 but Arapaho was fighting with -- he was trying to push Monty
17 to do some stuff to Chucky.

18 Q. Let's back up here a little bit. What do you mean when
19 you said Arapaho was being mean to Chucky?

20 A. He was just -- he was yelling at him and stuff and -- I
21 didn't know. I didn't know what was really even going on. I
22 didn't know.

23 Q. What was he yelling at him for?

24 A. I don't know. They just -- I don't know.

25 Q. Ms. Brown, do you remember talking to the FBI in the past?

1 A. Yeah, I do.

2 Q. Do you remember talking to them about the group drinking
3 down in the basement at 331 and somebody mentioned they
4 couldn't get alcohol?

5 MS. AMRAM: Objection; leading.

6 A. Yeah, they couldn't get alcohol.

7 THE COURT: I'll sustain the objection as to leading.
8 Go ahead and reask the question.

9 Q. (BY MR. CONDER) Ms. Brown, when you were down in the
10 basement drinking, do you recall how long you drank?

11 A. Yeah. For like a day and a half. I was there from
12 Saturday till Sunday. And then Chucky had brought a half a
13 gallon in, and he poured some in a half pint bottle or a pint
14 bottle, and he was keeping it for himself because he said he
15 wouldn't be able to buy alcohol until Sunday. And then we ran
16 out, and then Arapaho asked him if -- he said, "Give me that
17 shot bro," and he said no. And that's when I went upstairs,
18 and that's when I came back and Arapaho was fighting Chucky
19 over that half pint.

20 Q. And what do you mean? Could you describe how was Arapaho
21 fighting with --

22 A. He was trying to get the bottle out of his pocket, because
23 he put the bottle inside his -- in the inside pocket.

24 Q. And when you say fighting, were there punches?

25 A. Yeah, there was punches. And then when I came back down,

1 Chucky was on the floor, and they had a -- he was hitting him
2 with this piece of bar or orange metal bar.

3 Q. And who's "he"? Who was --

4 A. Arapaho.

5 Q. Who was he hitting?

6 A. He was hitting Charles Dodge.

7 Q. And did you see how many times he hit him?

8 A. Probably about four times. And then he started pushing
9 Monty around, telling Monty, "Come on, punk. Come on. Hit
10 him." So Monty was doing -- helping him.

11 Q. Did you see Mr. Whiteplume in the basement at this time?

12 A. Yeah. He was down there too. And then I jumped on
13 Chucky, and I was like, "Leave him alone now. That's enough."

14 And then Arapaho was like, "Get the F off him."

15 And BoMatt came -- I mean, I don't know what you guys
16 call him. I call him BoMatt. He came and he pulled me up,
17 and he was like, "Just let the homeboy handle it."

18 Q. And did Mr. Whiteplume do anything? Did he punch or kick?

19 A. No, he didn't.

20 Q. Do you remember --

21 A. Yeah. He had -- he had no shoes on, because I remember
22 when I was covering Chucky, his foot came under my foot, and
23 he pulled me up. And he was like, "Just let the homeboy
24 handle it." I remember him kicking him a couple times, but he
25 didn't -- he didn't even have no shoes on or anything.

1 Q. So Mr. Whiteplume kicked Chucky a few times?

2 A. A couple times.

3 Q. So let's back up here a little, Ms. Brown. When the
4 defendant, Mr. Oldman, asked Mr. Dodge for the bottle, asked
5 Chucky for a bottle, Chucky refused. What was Arapaho
6 Oldman's response? What did he do? What did you see?

7 A. He got angry. He got mad. He got angry.

8 Q. And did he act -- did he act on his anger?

9 A. Yeah.

10 Q. How did he act on his anger?

11 A. He -- he hit on Chucky.

12 Q. What do you mean, he hit on him?

13 A. He punched him.

14 Q. Where did he punch him?

15 A. In the face.

16 Q. Did he punch him more than once?

17 A. Yeah.

18 Q. Did he knock Chucky to the ground?

19 A. Yes, knocked him on the floor.

20 Q. What did he do? What did Mr. Oldman do when Chucky was on
21 the floor?

22 A. He started kicking him and he started talking to Monty,
23 yelling at Monty.

24 Q. What was he yelling at him?

25 A. He was telling him to "Come over here and F him up."

1 Q. And did he say what he meant by that? Did he -- did he
2 ask for anything? Did he do anything?

3 A. Yeah. He asked him to go get something, and that's when
4 he came down with that yellow -- that orange -- it was like an
5 orange bar thing. And I just seen him get over him and start
6 hitting him. He hit him about four times with it.

7 Q. So Mr. Oldman asked Monty -- and that's Monty Tabaho;
8 correct?

9 A. Yes.

10 Q. So Mr. Oldman asked Monty to go get a bar or --

11 MS. AMRAM: Objection; leading.

12 MR. CONDER: I apologize.

13 THE COURT: Go ahead and restate the question.

14 Q. (BY MR. CONDER) So Mr. Oldman told Monty Tabaho -- what
15 did he tell him? What did he say?

16 A. He just said, "Go get --" I don't know. I couldn't
17 remember either. I'm sorry. I can't remember. He just went
18 up the stairs and came back and came down with an orange bar
19 with, like, two things on the end. And then Monty -- or
20 Arapaho grabbed it and he just got over Chucky and he hit him,
21 like, four times with it.

22 Q. Okay. And what happened to Chucky once he was hit with
23 this bar?

24 A. He was on the floor. He was laying on the floor. He
25 couldn't get -- couldn't get back up. He was already all

1 bloody. His face was already all blood. And I asked Monty --
2 I was like, "Quit doing that." I was like, "Stop." But
3 Arapaho was pushing Monty around, calling him a punk and
4 making him do stuff to Chuck.

5 Q. Did there come a time that they stopped?

6 A. Yeah.

7 Q. And what was Chucky's condition then?

8 A. He was hardly even breathing. He was like gurgling and --
9 because they all went upstairs, and I was telling him, "Come
10 on. Come on."

11 Q. And let's back up here a little, Ms. Brown. So Chucky's
12 on the floor, and you described him being hit. The hitting
13 stops. What does Chucky look like? What does his face look
14 like?

15 A. It's -- his face is all swollen and bloody.

16 Q. Was he bloody?

17 A. Yeah.

18 Q. Could he talk?

19 A. No.

20 Q. But he was breathing?

21 A. Yeah. He was barely breathing.

22 Q. So when they stopped, did Chucky just stay there, or did
23 he go somewhere?

24 A. He just stayed there. He couldn't even get up.

25 Q. Did they do anything to him? Did -- Mr. Oldman,

1 Mr. Whiteplume, Mr. Tabaho, did they do anything? Did they
2 move him?

3 A. Yeah. They put him in that crawl space, in that crawl
4 space in the basement.

5 Q. And who put him in that crawl space?

6 A. BoMatt and Arapaho.

7 Q. And BoMatt, again, that's Mr. Whiteplume?

8 A. Yeah.

9 Q. And what did they do when they put him in there?

10 A. Arapaho unplugged that freezer, and he said, "Open
11 this --" or, "Unplug this fucker so they won't -- in case he
12 rots, they won't smell him."

13 Q. And who said that?

14 A. Arapaho.

15 Q. And so once Mr. Whiteplume and the defendant got -- put
16 Chucky in the crawl space, what did they do?

17 A. I don't know. They went upstairs, and I left. I checked
18 out of there.

19 Q. When did you check out?

20 A. I hitchhiked out. It was still kind of dark when I left.

21 Q. Did you stay down there by yourself for a while?

22 A. Yeah.

23 Q. What did you do when you were down there by yourself?

24 A. I tried to get Chucky to get up, but I just told him,
25 "Come on. Let's go before they come back." But he was like

1 gurgling, and I couldn't lift him out of there.

2 Q. Was his throat cut?

3 A. His throat wasn't cut when I was there.

4 Q. So his throat was not cut?

5 A. No, not while I was there. He was just beat up real bad.

6 Q. And were you down there -- how long do you think you were
7 down there alone with Mr. Dodge?

8 A. I don't know. It seemed like a long time.

9 Q. How many times did you check on him?

10 A. Like, three times. I was just trying to make him get up.
11 I was waiting for it to get light because I didn't want to
12 hitchhike out of there. It was kind of scary out there. I
13 didn't want to hitchhike because it was still dark out.

14 Q. When you left, was Chucky still breathing?

15 A. Yeah, kind of. He was like gurgling barely.

16 Q. Did you ever touch him or feel him?

17 A. Yeah.

18 Q. Why'd you do that?

19 A. Because it was cold in that crawl space, and I was
20 trying -- I was trying to pull him out. But I couldn't even
21 lift him up.

22 Q. Did you ever get him out?

23 A. No.

24 Q. When you were down there and you saw the defendant, Monty,
25 and the bar, what was Mr. Whiteplume doing?

1 A. He was just trying to pull -- he was trying to make him
2 stop. He was trying to stop Arapaho, but Arapaho was real
3 mad.

4 Q. Was there a time when Mr. Whiteplume said, "We ought to
5 cut his throat?"

6 MS. AMRAM: Objection; leading.

7 THE COURT: Sustained.

8 A. No, but --

9 THE COURT: Hold on, ma'am.

10 Go ahead and ask another question.

11 Q. (BY MR. CONDER) When -- when the defendant,
12 Mr. Whiteplume, and Monty went upstairs, do you know if they
13 left the house, or did they stay there?

14 A. I don't know if they left or not.

15 Q. So as far as you knew, you were -- you were the only one
16 in the basement?

17 A. Yeah. I was down there with him by myself.

18 Q. And you said when Monty went to get the bar -- or do you
19 know where he -- where did Monty go? What did you see?

20 A. I just seen him run up the stairs and then run back down,
21 come back down. He was, like, just running around, just doing
22 what Arapaho told him to do.

23 Q. And what color was the bar?

24 A. It was orange.

25 Q. And how would you describe that?

1 A. It was probably like about this long, and it's got two
2 little things on the end. That's the end I seen. And it,
3 like, had orange paint or something on it. It was...

4 Q. You mentioned something about a freezer. What -- what
5 were you talking about? What's -- what happened with the
6 freezer?

7 A. Well, there was a freezer in the basement, in his
8 grandma's basement, in BoMatt's grandma's basement. And I
9 just seen Arapaho -- he said, "Unplug this freezer so they
10 won't smell this fucker rot."

11 Q. Did you ever hit Chucky?

12 A. No.

13 Q. Did you kick him?

14 A. No.

15 Q. Did you try to hurt him?

16 A. No. That was the very first time I ever met him.

17 Q. How was he acting that night?

18 A. He was just a real quiet guy, like a shy guy. He was just
19 visiting and just -- it was mostly just me and him talking.
20 He asked me what Browns I came from. And I didn't really
21 hardly know any of those people, but I was just there because
22 somebody took my heater, stole my propane tank from my house,
23 so I didn't have anywhere real warm to stay.

24 Q. So do you have a problem with alcohol?

25 A. Yeah, I think I do.

1 Q. Because of that problem with alcohol, do you ever go to
2 detox?

3 A. Yes.

4 Q. And do you remember going to detox on December 3rd of
5 2017?

6 A. Yes, I do. That's when BoMatt came in and he asked
7 where -- "Is Bernadette Brown here?"

8 And Ronnie Brown said, "Yes. She's --" I was laying
9 on the mat, and he said, "Bernadette, somebody wants you out
10 here."

11 So I came out, and BoMatt was standing out there.
12 And he was like, "Come on. I got to talk to you. We need to
13 take off from here. Somebody else wants to talk to you."

14 Q. So did you take off with him?

15 A. Yes.

16 Q. Where'd you guys go?

17 A. We walked up the hill and up to Smith's.

18 Q. And did you guys drink?

19 A. Yes.

20 Q. What did you talk about when you were drinking?

21 A. We just talked about what happened.

22 Q. What did you talk about? What did you say?

23 A. He just -- I just asked him, and he was like, "I don't
24 know."

25 He said -- I think -- I just asked him -- I was like,

1 "Does anybody remember me being there?"

2 And he's like, "Yeah, they do." He's like, "So you
3 better watch out, because Arapaho's nephews will probably be
4 looking for you."

5 And I was like, "Well, I didn't do nothing."

6 He was like, "Yeah, but they think you're the one
7 that snitched."

8 And I said, "I didn't even tell nobody," because I
9 didn't even talk about it or anything after that morning I
10 left.

11 And then he's like, "Well, I think they --" he said,
12 "I think he had to slice that nigga's throat --" oh, he said,
13 "I had to slice that nigga's throat."

14 Q. That what's Mr. Whiteplume said?

15 A. Yes.

16 Q. Do you remember the first time you talked to the FBI, on
17 December 8?

18 A. Yeah.

19 Q. At that time you never mentioned Monty being there?

20 A. Because he's my friend, and he said that he was going to
21 talk to you guys himself.

22 Q. Okay. Explain that. Why didn't you tell -- when you
23 spoke to the FBI on December 8 --

24 A. Because Monty was -- Monty didn't -- he wasn't really --
25 he was, like, forced to do that stuff. He's not -- he's not

1 that kind of person. But with Arapaho pushing him and stuff,
2 that's why he did that.

3 Q. And did you talk to Monty about what he -- what did he
4 tell you about what he was going to do? Did Monty say what he
5 was going to do?

6 MS. AMRAM: Objection; calls for hearsay.

7 Q. (BY MR. CONDER) Why did Monty --

8 THE COURT: Go ahead. Reask the question.

9 Q. (BY MR. CONDER) Did Monty ask you to keep quiet?

10 A. Yeah, he did.

11 Q. Did he tell you why?

12 MS. AMRAM: Objection; calls for hearsay.

13 THE COURT: I'll sustain. I'll sustain.

14 MR. CONDER: Okay. Sorry, Your Honor.

15 Q. (BY MR. CONDER) So when you talked to the FBI again in
16 November of this year, why did you tell -- tell them this time
17 about Monty being there?

18 THE COURT: And, Counsel, just so that the record
19 will be clear, when you say "this year" --

20 MR. CONDER: 2018. Sorry. Thank you, Your Honor.

21 A. Because I -- while my boyfriend went to jail with him,
22 Joey Van Vleet, he talked to him. And he's like, "Monty
23 said --"

24 MS. AMRAM: Objection; calls for hearsay.

25 THE COURT: I'll sustain as to hearsay of what her

1 boyfriend said or Monty said to her boyfriend.

2 Q. (BY MR. CONDER) But you didn't tell the FBI about Monty
3 until November of 2018?

4 A. Yeah.

5 Q. Ms. Brown, when you were down in that basement, did
6 Mr. Whiteplume hit Chucky with the bar?

7 A. I don't -- I don't recall that. I just remember Arapaho
8 hitting him and Monty kicking him and stuff. I don't think
9 BoMatt -- I just remember him kicking him twice. I just --
10 but I never seen BoMatt hit Chucky with that bar.

11 Q. And when you left that morning, was it still dark?

12 A. Yes.

13 MR. CONDER: May I have a moment, Your Honor?

14 THE COURT: You may.

15 (Discussion off the record.)

16 MR. CONDER: No further questions, Your Honor.

17 THE COURT: All right. Thank you.

18 Cross-exam.

19 MS. AMRAM: Your Honor, I do expect it to be somewhat
20 long, and I am worried about breaking in the middle for lunch.
21 Could we take lunch now, or should we break during
22 cross-examination?

23 THE COURT: Why don't you go ahead and start and
24 we'll see where we go.

25 Ladies and gentlemen of the jury, is it all right if

1 we take a late lunch? Anyone have a concern? I don't want to
2 have someone with a diabetic concern or something.

3 All right.

4 CROSS-EXAMINATION

5 BY MS. AMRAM:

6 Q. Good afternoon, Ms. Brown.

7 A. Good afternoon.

8 Q. My name is Galia Amram, and I'm one of Arapaho Oldman's
9 lawyers.

10 A. Okay.

11 Q. I know you talked with Mr. Conder about your meth use, and
12 I wanted to talk to you about that a little more.

13 A. Uh-huh.

14 Q. The first time that you talked to the FBI, that was on
15 December 8th of 2017. Do you remember that?

16 A. Yes.

17 Q. And you were talking to them about your ex-boyfriend?

18 A. Uh-huh.

19 Q. Because he was accused of molesting your niece. Do you
20 recall that?

21 A. Yes.

22 Q. Okay. And you told him that you'd been on a four-day meth
23 binge?

24 A. Uh-huh.

25 Q. Do you recall that?

1 THE COURT: And, ma'am, if I could have you say "yes"
2 or "no" because "uh-huhs" are tough --

3 A. Oh, yes.

4 Q. (BY MS. AMRAM) And it was at the end of that interview
5 you called the agent back and said you had something to tell
6 them about a murder?

7 A. Uh-huh, yes.

8 Q. And that was not the first time that you'd used meth?

9 A. No.

10 Q. And you've used meth with various people in this case. So
11 you've used meth with Tara Brown?

12 A. Yes.

13 Q. And on the night this happened, as you told Mr. Conder,
14 you were using meth?

15 A. Yes.

16 Q. You also used meth again on December 2nd of 2017?

17 A. Yes.

18 Q. Okay. And you talked with Mr. Conder about how sometimes
19 you go to detox?

20 A. Yes.

21 Q. You went into detox on December -- November 29th of 2017.
22 Do you remember that?

23 A. Yes.

24 Q. And then you went into detox again on December 2nd of
25 2017, so a few days later?

1 A. Yes.

2 Q. And then you -- do you remember being discharged on the
3 morning of December 3rd of 2017? That was a few days after --
4 the day after you'd gone in.

5 A. Yes.

6 Q. And then you came back later that afternoon. You'd drunk
7 after you left, and you came back again --

8 A. Uh-huh.

9 Q. -- on December 3?

10 A. Yes.

11 Q. And then that was the time, on December 3, that you left
12 with Whiteplume?

13 A. Uh-huh.

14 Q. Now, I know you talked about using meth on the night that
15 you were with Mr. Dodge, but you also were drinking alcohol?

16 A. Yes. We all were.

17 Q. You all were. Okay. And you told the FBI you think you
18 were an eight out of ten in terms of how drunk you were that
19 night?

20 A. I never told them.

21 Q. You never told them that?

22 Now, you were at 331 Great Plains for, you said, I
23 think it was a day and a half?

24 A. Yeah.

25 Q. And is it fair to say that you were using meth and

1 drinking throughout that time period?

2 A. We all were.

3 Q. And is the timeline of what happened when somewhat
4 confusing to you?

5 A. No.

6 Q. So you didn't tell the FBI you were confused on the
7 timeline of what happened during the time you were there?

8 A. No.

9 Q. So you have talked to the FBI a number of times in this
10 case; correct?

11 A. Like, three times, four times.

12 Q. So you talked to them on December 8?

13 A. Yes.

14 Q. And then you talked -- and that was first with the agent
15 that you talked to about --

16 A. Swanson.

17 Q. Yeah, about your boyfriend?

18 A. Yes.

19 Q. And then you -- on that same day you talked to Agent
20 Coble?

21 A. I don't think it was on the same day.

22 Q. And is that Agent Chris Coble right there?

23 A. Yes, it is.

24 Q. And then you talked to them again almost a year later, on
25 November 19th of 2018?

1 A. Yes.

2 Q. And then you talked to an Agent Warren from the FBI on
3 December 18th of 2018?

4 A. No.

5 Q. You did not?

6 A. No.

7 Q. Would it refresh your recollection to look at an FBI
8 report about what happened on December 18, 2018, about whether
9 or not you talked to the FBI then?

10 A. Sure.

11 Q. I'm going to hand you two reports.

12 (Counsel confer.)

13 Q. (BY MS. AMRAM) So you don't need to read these whole
14 things, but if you could look at them and just tell me if it
15 helps you remember whether or not you talked to the FBI and --

16 A. The only one I talked to was Swanson and Chris Coble.

17 Q. Okay. And so you remember talking to them, but you're not
18 sure about Agent Warren?

19 A. Huh-uh.

20 Q. Okay. Now, I -- there's been different things that you've
21 told the FBI during the times that you've talked to them.

22 A. Uh-huh.

23 Q. And Mr. Conder asked you about Monty, about how you had
24 not told the truth about Monty initially. So I'm going to go
25 through some of those with you. So let's talk about first

1 when you talked to the FBI in November. So you were -- do you
2 remember being at the Walmart when you saw Matthew Whiteplume
3 and Tara Brown?

4 A. I didn't see them at the Walmart. I stopped at the
5 Walmart before -- after I got off from cleaning the houses
6 that day. I stopped at Walmart, and then I went home, and I
7 was coming back. But I didn't have no heater, no way of
8 heating my house. I stopped there again. I got me a
9 bottle -- a traveler of red cap vodka, and then I was up by
10 the co-op.

11 Q. Okay. I apologize. So you were up at the co-op when you
12 saw them?

13 A. I was walking, and they pulled over and picked me up.

14 Q. And you know Matthew Whiteplume well?

15 A. Yes.

16 Q. And you guys are cousins?

17 A. Yes.

18 Q. And you're close to Mr. Whiteplume?

19 A. Yeah, I -- we're cousins. I mean, we party and stuff
20 together, but I'm closer to Tara than I am him.

21 Q. Okay.

22 A. And she's a cousin too.

23 Q. Okay. And did you talk to the FBI about when you had
24 got -- were able to buy a Monte Carlo?

25 A. Did I talk to them when I was able to buy a Monte Carlo?

1 Q. Yeah. Did you buy a Monte Carlo at some point?

2 A. Yes.

3 Q. And you thought about putting that in Matthew Whiteplume's
4 name?

5 A. No.

6 Q. You never --

7 A. I never.

8 Q. So you never told the FBI that you thought about putting a
9 Monte Carlo in Matthew Whiteplume's name?

10 A. No.

11 Q. So did Mr. Whiteplume and Ms. Brown pick you up?

12 A. Yes.

13 Q. And where did you go first?

14 A. We stopped at River City Bar, and then we went out to
15 Great Plains.

16 Q. And you -- did you go to Angela Duran's house?

17 A. Yes. We went over there. She fed us, and then we went
18 back over to Matt's grandma's, Matthew's grandma's.

19 Q. And at Angela Duran's house you bought some meth?

20 A. No. I already had meth.

21 Q. So Angela's son didn't sell you meth there?

22 A. No. I already had it. I sold him some.

23 Q. Okay. And then did you go back to Riverton to get more
24 alcohol?

25 A. Yes.

1 Q. And then did you go to a different house in Great Plains
2 housing?

3 A. No.

4 Q. You didn't?

5 A. Huh-uh.

6 Q. Did you go to a burned-out house at some point in Great
7 Plains housing?

8 A. Oh, yeah. We took Tara over there to that burned-out
9 house. There was a burned house there, and they just had a
10 blanket on that back room, and that's where everybody was
11 sitting there.

12 Q. And you used meth there?

13 A. Yes.

14 Q. And the group that was there at the burned-out house was
15 you, Tara Brown, Matthew Whiteplume, Monty Tabaho, and Arapaho
16 Oldman?

17 A. Yes.

18 Q. And it was daylight during that time?

19 A. Yes.

20 Q. And you also saw Chucky at the burned-out house?

21 A. Yes. He came over. Then he rode back over to BoMatt's
22 grandma's with us.

23 Q. And then while you were all -- while this group was at the
24 burned-out house, you were doing meth and drinking alcohol?

25 A. Yes.

1 Q. And then you left the burned-out house, and you went to
2 331 Great Plains?

3 A. Yes.

4 Q. And then at some point the group of people went to the
5 basement of 331 Great Plains?

6 A. Yes.

7 Q. And that included you, Arapaho Oldman --

8 A. Me, Arapaho, Monty, Tara, and BoMatt.

9 Q. And Jessica Guffey was there as well?

10 A. Yes. And then Star Addison came from -- I think he was
11 next door somewhere. He came from somewhere. He was down
12 there for a bit.

13 Q. Now, the first time that you talked to the FBI about this,
14 you were not honest with them about who was at the house; is
15 that correct?

16 A. Yes.

17 Q. So you didn't tell them that Monty was there?

18 A. No, I didn't.

19 Q. And you didn't tell them that Jessica Guffey was there?

20 A. No.

21 Q. And was that because you wanted to protect Monty?

22 A. Yes.

23 Q. And it was because you wanted to protect Jessica?

24 A. Yes.

25 Q. And after the murder happened, you talked to Monty. You

1 talked to Monty about it; is that correct?

2 A. Yes.

3 Q. And that conversation -- there was conversations on
4 Facebook Messenger about that?

5 A. Yes.

6 Q. And you told the FBI that you-all had talked about the
7 murder on Facebook Messenger?

8 A. Yes.

9 Q. And you also talked to Matthew Whiteplume about the
10 murder?

11 A. That was at the detox -- when we took off from detox.

12 Q. Okay. And did you also talk with Matthew Whiteplume over
13 Facebook Messenger?

14 A. No.

15 Q. And in addition to the meth and the alcohol, were you also
16 snorting Wellbutrin?

17 A. No. They didn't buy it, and I don't snort --

18 Q. So other people were, but you were not?

19 A. Huh-uh.

20 THE COURT: And that's a "no," ma'am?

21 THE WITNESS: "No."

22 THE COURT: Thank you.

23 Q. (BY MS. AMRAM) Now, at some point while the group was at
24 331 Great Plains, did Jessica Guffey and Arapaho get in a
25 fight?

1 A. Yes.

2 Q. And Jessica ended up being picked up by a woman named
3 Carol?

4 A. Yes. She didn't leave with her because Arapaho took her
5 shoes away from her.

6 Q. So Carol came to 331 Great Plains --

7 A. She came to buy some Wellbutrin from somebody, and Jessica
8 asked her for a ride, but Arapaho took her shoes from her.

9 Q. So Jessica stayed at 331 Great Plains?

10 A. Yes.

11 Q. And Carol came and went but did not stay?

12 A. Yeah. She didn't stay there. She just came to buy those
13 pills.

14 Q. Okay. Now, so let's talk about when the beating started.
15 You told Mr. Conder that Matthew Whiteplume didn't hit --
16 didn't hit Chucky; is that correct?

17 A. No, I didn't see him hit him at first.

18 Q. Did you tell the FBI on November 19 that BoMatt jumped on
19 Chucky and got blood all over him?

20 A. No. I jumped on him. I put myself over him because I
21 didn't want him -- Arapaho hitting him any more.

22 Q. Okay. So you're saying Mr. Whiteplume never jumped on
23 Chucky?

24 A. No.

25 Q. Now, you said he kicked him without -- you told Mr. Conder

1 that he kicked him and he didn't have shoes on.

2 A. Yeah. I know he didn't have any shoes on because when I
3 jumped on Chucky and covered him and told him to stop, I had
4 blood on my coat and on my boots. And BoMatt came and reached
5 his foot was underneath me, and I seen that he just had socks
6 on.

7 Q. Okay. And did you tell the FBI before that Mr. Whiteplume
8 kicked Chucky in the head two times?

9 A. Yeah. He did. He kicked him a couple times.

10 Q. And that was in the head?

11 A. Uh-huh.

12 Q. Now, you talked with Mr. Conder about a weapon that
13 Arapaho used to beat Chucky.

14 A. Yes.

15 Q. When you met with the FBI on November 19, you drew a
16 picture of that weapon. Do you remember that?

17 A. Yeah, I remember.

18 MS. AMRAM: So can we pull up -- it's JERS Exhibit A
19 just for the witness, please, Your Honor.

20 THE COURT: It's being displayed to the witness only
21 and counsel.

22 Q. (BY MS. AMRAM) So you described the weapon as a 12- to
23 18-inch-long orange wrench-type tool with a flipping 90-degree
24 head at the end meant to fit over and remove tire lugs. Do
25 you remember giving that description?

1 A. Yeah. This is the one that Monty brought in. But then
2 they used that big old long one, like this, that had the --
3 that had the little thing on the end.

4 Q. So do you --

5 A. This one was still laying on the thing in that basement,
6 but they used that big old long thing.

7 Q. Okay. So do you recall telling the FBI that this was the
8 weapon that was used to assault --

9 A. Yeah. That one was too.

10 Q. Okay. So there were two weapons used to assault Chucky?

11 A. Yeah. This one right here was black. It wasn't orange.
12 I don't know. I was kind of -- I mean, I was pretty
13 intoxicated and stuff there that night --

14 Q. Okay.

15 A. -- or that morning.

16 Q. Is this picture the picture you drew for the FBI of the
17 weapon?

18 A. Yeah.

19 Q. Of the wrench weapon?

20 A. Yeah.

21 MS. AMRAM: Okay. I would ask to admit JERS Exhibit
22 A into evidence.

23 MR. CONDER: No objection.

24 THE COURT: All right.

25 MS. AMRAM: And then I would ask to publish to the

1 jury.

2 THE COURT: Exhibit A will be admitted and published
3 to the ladies and gentlemen of the jury.

4 (Defendant's Exhibit A received.)

5 MS. AMRAM: Thank you. You can take that down.

6 Q. (BY MS. AMRAM) Now, Monty was the first person to hit
7 Chucky with the weapon?

8 A. No. Arapaho was. He hit him four times. He was standing
9 over him, hitting him.

10 Q. So you never told the FBI that Monty was not the first
11 person to hit him with the weapon?

12 A. No. Arapaho was.

13 Q. Monty -- did you tell the FBI that Monty hit Chucky
14 multiple times with the weapon?

15 A. Yeah. Because Arapaho was pushing him around, calling him
16 a punk, telling him what to do.

17 Q. And Chucky was trying to block Monty's blows?

18 A. Yes.

19 Q. But he was unable to do so?

20 A. Yes.

21 Q. Because of how big Monty was?

22 A. No.

23 Q. And was Monty also kicking Chucky in his torso?

24 A. Yes. But he was -- he wasn't trying. It was -- Arapaho
25 was pushing him around, and he was making him do -- do that.

1 That's why --

2 Q. Do you remember telling the FBI that Monty was kicking
3 Chucky in the torso?

4 A. Yes.

5 Q. Do you remember telling the FBI that Arapaho, Monty, and
6 BoMatt beat Chucky until he was unresponsive?

7 A. Yes.

8 Q. So BoMatt did participate in the beating?

9 A. Yeah. He kicked him twice in the head.

10 Q. Now, at some point you saw Monty with a knife?

11 A. Yes.

12 Q. You did not see Arapaho with a knife?

13 A. I don't -- I seen Monty with it, but I didn't see him use
14 it.

15 Q. Okay. Now, you -- at some point Arapaho and
16 Mr. Whiteplume left the house; correct?

17 A. Yes.

18 Q. And you stayed with Chucky in the basement?

19 A. Yeah. I was just sitting there waiting for it to get
20 light so I could leave.

21 Q. And then when you left, they had not come back?

22 A. No.

23 Q. And when you left, Chucky had not been -- his throat had
24 not been slit?

25 A. No, it wasn't.

1 Q. And he had not been stabbed?

2 A. No, he wasn't be stabbed or his throat wasn't slit when I
3 left. He was just beat real bad.

4 Q. And Lonestar Addison was present as well?

5 A. He was there for a while. He came in there, and he had a
6 half a gallon too.

7 Q. Now, when you were in the basement while the beating was
8 going on, Matthew Whiteplume suggested slitting Chucky's
9 throat?

10 A. Yes.

11 Q. And then later on at Center of Hope, when you saw him on
12 December 3, he said he slit his throat?

13 A. Yes.

14 Q. Now, when you were first interviewed by the FBI on
15 December 8, you told them that only Arapaho beat Chucky. That
16 wasn't true; right?

17 A. No.

18 Q. And that was to protect Monty?

19 A. Yes.

20 Q. And to protect Whiteplume?

21 A. Yes.

22 Q. You also told the FBI that Arapaho threw Chucky in the
23 crawl space all by himself; is that true?

24 A. No.

25 Q. It's not true that Arapaho put him in the crawl space by

1 himself?

2 A. No.

3 Q. But it is what you told the FBI when you talked to them
4 the first time?

5 A. Yeah, because I was trying to protect Monty and BoMatt.

6 Q. And in earlier times you told the FBI that Arapaho grabbed
7 the wrench by himself, but in fact Monty handed it to him?

8 A. Yeah.

9 Q. And that was to protect Monty?

10 A. Yes.

11 Q. Now, on December 18th of 2018, when you were interviewed,
12 you told the FBI that Arapaho and Monty beat Chucky, but you
13 didn't say that Whiteplume beat him. And that was not true;
14 correct?

15 A. Well, BoMatt kicked him twice. That's all I seen him, was
16 kicking him twice in the head.

17 Q. So he kicked him, not beat him?

18 A. Yeah.

19 Q. You also talked -- told Agent Warren that you hadn't
20 talked to Matthew Whiteplume since the murder, but that --

21 A. I don't even know who Agent Warren is. I don't remember
22 talking to an Agent Warren.

23 Q. And when you talked to the FBI on December 18, you told
24 them that you hadn't talked to Matthew Whiteplume. But that's
25 not true; correct?

1 A. I didn't talk to him until he came and got me at the
2 detox.

3 Q. And you also lied to the FBI about Jessica Guffey's
4 presence in the basement?

5 A. Yes, at first I did.

6 Q. And that was because Ms. Guffey asked you not to?

7 A. No, she didn't ask me not to. We just hung out before,
8 and she's -- she's a friend of mine.

9 Q. Did she promise that if you didn't tell about her being
10 there, she wouldn't tell about you being there?

11 A. Yes.

12 Q. Now --

13 THE COURT: Counsel, are you at a transition point?

14 MS. AMRAM: I could -- I can, sure. That's fine.

15 THE COURT: Or do you have some more?

16 MS. AMRAM: I have more, but I'm happy to take a
17 break now. That's totally fine.

18 THE COURT: Ladies and gentlemen, we'll go ahead and
19 take our lunch recess. We'll take an hour recess and be back
20 at 1:30. I'll remind you of the recess instruction. Have a
21 good lunch.

22 Please rise.

23 (The jury exited the courtroom at 12:29 p.m.)

24 (The following took place outside the presence of the
25 jury.)

1 THE COURT: Any additional matters we need to address
2 before we come back from lunch? Mr. Conder?

3 MR. CONDER: Nothing from the United States, Your
4 Honor.

5 THE COURT: Ms. Amram?

6 MS. AMRAM: No, Your Honor.

7 THE COURT: Thank you. We'll stand in recess for
8 lunch.

9 (At 12:30 p.m. a recess was taken until 1:36 p.m.)

10 (The following took place outside the presence of the
11 jury.)

12 THE COURT: Thank you. I note the presence of
13 counsel, presence of the defendant, absence of the ladies and
14 gentlemen of the jury.

15 Any matters we need to address before we bring in the
16 ladies and gentlemen of the jury? Mr. Conder?

17 MR. CONDER: Briefly, Your Honor. I would just give
18 an update on the matter regarding --

19 THE COURT: Go ahead and have a seat.

20 MR. CONDER: I'm sorry, Your Honor. The matter
21 regarding Ms. Fatima Addison. I spoke over the lunch hour
22 with Dr. Kim Donahue. She's a family medicine provider for
23 Indian Health Services in Fremont County.

24 She indicated basically, Your Honor, that Fatima
25 Addison was checked into the hospital on January 4 late in the

1 afternoon. During the course of her stay -- she's still
2 there -- they've determined that she has a bacterial blood
3 infection and a bone infection. The doctor said she has a
4 33 -- the type of bacterial infection has a 33 percent
5 mortality rate. It indicates -- or she indicated, Your Honor,
6 that at this time, the medical best prognosis option is to
7 amputate Ms. Addison's leg below the knee or at the knee.

8 Apparently last night when this information was
9 relayed to Ms. Addison, she became extremely upset due to
10 multiple factors. And so she is now currently on some sort
11 of -- I guess I would describe it generally as some
12 antidepressant, loosely speaking, Your Honor. Anyway, the
13 doctor said that based upon this medication, she would not be
14 safe to drive, that it's unknown whether she would even be
15 able to make informed-consent medical decisions based upon
16 taking those pills and the current situation.

17 So I guess what I'm trying to say, Your Honor, is
18 everything's in flux. I have an IT team from the United
19 States seeing if they can hook up a video with the hospital.
20 But at the current moment, it doesn't appear that she would be
21 competent to testify, and it would obviously present major
22 hurdles to do so over the video.

23 Having said that, Your Honor, if the Court wanted, in
24 the off chance that things got better, Dr. Donahue would be
25 able after-hours for a telephone hearing if necessary. I

1 guess we can cross that bridge when we get there, but I wanted
2 to give the Court an update. And we're juggling that chainsaw
3 as fast as we can.

4 THE COURT: Fair enough. Well, here's what I see if
5 things would change in terms of her medical condition and her
6 alertness. Then you could alert the Court and we'll look at
7 it. But at this point in time, it wouldn't appear that it
8 would be an available option regardless, given her current
9 psychological state. Is that a fair summary?

10 MR. CONDER: Yes, Your Honor.

11 THE COURT: So we'll cross that bridge if it presents
12 itself.

13 In the meantime, anything else, Ms. Amram?

14 MS. AMRAM: No, Your Honor.

15 THE COURT: All right. Sorry I broke up your exam,
16 but I wanted to use every ounce of time.

17 MR. CONDER: Your Honor, should we have the witness
18 come back in before the jury?

19 THE COURT: Let's go ahead and bring the witness back
20 in and put her on the stand.

21 MS. AMRAM: Your Honor, we did want to ask, is it
22 possible to raise her chair? We can't see her face over here.
23 I don't know if that's possible.

24 THE COURT: Let's go ahead and have her first adjust
25 the chair a little bit.

1 (Discussion off the record.)

2 THE COURT: Let's go ahead and bring in the ladies
3 and gentlemen of the jury. Please rise.

4 (The jury entered the courtroom at 1:41 p.m.)

5 THE COURT: Thank you. Please be seated.

6 I'll remind the witness you're still under oath.

7 Cross-exam.

8 Q. (BY MS. AMRAM) Good afternoon, Ms. Brown.

9 A. Good afternoon.

10 Q. You mentioned earlier that the only time you spoke to
11 Matthew Whiteplume after the murder was at the detox.

12 A. Yes.

13 Q. But he called you on December 8 and threatened you;
14 correct?

15 A. Yes.

16 Q. Okay. He said, "You better keep your fucking mouth shut,
17 bitch, because the FBI's fucking -- what the fuck it -- I
18 don't even know," he said. "I don't even know if it's the
19 FBI." Is that what he said to you?

20 A. Yes.

21 Q. And then at the detox he threatened you there as well?

22 A. No. He just asked me to go with him, that somebody else
23 wanted to talk to me. And he asked me if -- he said they
24 thought I was the one who snitched.

25 MS. AMRAM: Okay. Can we play 494.

1 THE COURT: All right. Has this been admitted?

2 MS. AMRAM: It's for impeachment, but it's the
3 transcript -- it's the record of her interview with the FBI.
4 But I can show Mr. Conder a transcript.

5 THE COURT: Any objections?

6 MR. CONDER: No, Your Honor.

7 THE COURT: All right. Go ahead and play.

8 (Playing recording.)

9 Q. (BY MS. AMRAM) Ms. Brown, is that your voice?

10 A. Yes, it is.

11 Q. And is that you recounting what Mr. Whiteplume said to you
12 at detox?

13 A. Yes.

14 Q. And you mentioned earlier that you did not speak to
15 Mr. Whiteplume on Facebook Messenger after the murder; is that
16 correct?

17 A. Yes.

18 Q. Did you tell -- did you tell the FBI that you spoke to
19 Mr. Whiteplume on Facebook Messenger between his release from
20 the jail and his subsequent rearrest?

21 A. I didn't -- we didn't talk about the murder, but we
22 just -- he just said he needed to talk to me.

23 Q. He said he needed to talk to you?

24 A. He asked me if I mentioned anybody or if I told them, and
25 I said, "No, I didn't talk to nobody about it."

1 Q. Okay. And you also spoke to Monty Tabaho through an
2 intermediary, Jody?

3 A. Yes.

4 Q. And was that because Monty Tabaho was in jail at the time?

5 A. Yes.

6 Q. And his jail visits were recorded?

7 A. I don't know.

8 Q. And his jail calls were recorded?

9 A. I don't know.

10 Q. Did you need to talk to him through an intermediary so
11 that nobody would be able to hear what you were talking about?

12 A. No.

13 Q. Okay. Did you receive a letter from Jody that provided
14 instructions for how to contact -- how to have contact with
15 Monty Tabaho while he was in the jail?

16 A. Yes.

17 Q. And the clothes that you were wearing the night that
18 Chucky was beaten, those were bloody; is that correct?

19 A. Yes. My coat and my boot had blood on it.

20 Q. Okay. And your pants as well?

21 A. I don't know if my pants did, but I know my boots. The
22 side of my boot did and the front of my coat.

23 MS. AMRAM: I'm sorry. One second, Your Honor.

24 THE COURT: All right.

25 (Counsel confer.)

1 Q. (BY MS. AMRAM) And, Ms. Brown, in 2013 you were convicted
2 of falsely reporting a crime?

3 A. 2013? I don't remember that. I was in prison, I think,
4 in 2013.

5 MS. AMRAM: Can we just show the witness and counsel
6 Exhibit 39?

7 THE COURT: All right. Exhibit 39's being displayed
8 only to the witness and counsel.

9 Q. (BY MS. AMRAM) Do you see that?

10 A. (No response.)

11 MS. AMRAM: Can you scroll through there.

12 Q. (BY MS. AMRAM) Do you see that second page, Ms. Brown?

13 A. Yes, I do.

14 Q. Is that your name in the top left corner?

15 A. Yes, it is.

16 Q. And is that your year of birth?

17 A. Yes.

18 Q. And is that a judgment of conviction for a crime of
19 falsely reporting a crime?

20 A. Yeah. I do remember that.

21 Q. Okay. And that was for calling 911 and reporting fake
22 crimes?

23 A. No, it wasn't a fake crime. It was an assault, but he had
24 already taken off. I do remember that.

25 MS. AMRAM: Your Honor, I would seek to move to admit

1 Exhibit 39 into evidence.

2 THE COURT: Any objections?

3 MR. CONDER: Your Honor, it looks to be authentic, so
4 I would have no objection.

5 THE COURT: Exhibit 39 will be admitted.

6 (Defendant's Exhibit 39 received.)

7 MS. AMRAM: Can we pull up Exhibit 38 to counsel and
8 the witness, please. Oh, I'm sorry I should have published
9 it. I'm sorry. I forgot.

10 THE COURT: Yes.

11 MS. AMRAM: Can we put 39 back up?

12 THE COURT: All right. Exhibit 39 is being published
13 to the ladies and gentlemen of the jury.

14 THE COURTROOM DEPUTY: Do we have that?

15 MS. AMRAM: No. And for some reason my paper copy's
16 missing, but I will get it to you.

17 THE COURT: All right.

18 MS. AMRAM: Thank you, Your Honor.

19 Can we pull up Exhibit 38 to counsel and the witness.

20 THE COURT: It's being limited to counsel and the
21 witness.

22 MS. AMRAM: And can we scroll forward, please, to the
23 next -- nope. Can you go back up. There. Stop.

24 Q. (BY MS. AMRAM) And, Ms. Brown, can you just review that,
25 please, on your screen.

1 THE COURT: To yourself.

2 Q. (BY MS. AMRAM) And, Ms. Brown, just let me know when
3 you're done.

4 A. Okay. I remember this.

5 Q. And that was for calling 911 and reporting a dead body in
6 a city park, a second call reporting a rape, and a third call
7 reporting people dealing meth?

8 A. Yeah. That was Maggie -- I don't remember her name, but
9 she was the one that had my phone. And when the cops got
10 there, they said it came from my number. And I did have my
11 phone back, but she was the one using it. She had it clear on
12 the other side of the park.

13 Q. But did you plead guilty to that?

14 A. Yeah, I did, because it was my phone.

15 MS. AMRAM: Just one second, please, Your Honor.

16 THE COURT: All right.

17 MS. AMRAM: Thank you, Your Honor. No further
18 questions.

19 THE COURT: All right. Redirect.

20 REDIRECT EXAMINATION

21 BY MR. CONDER:

22 Q. Ms. Brown, you mentioned earlier -- you referenced Tara,
23 Tara Brown.

24 A. Yes.

25 Q. Who is she? Is she attached to somebody, somebody's

1 girlfriend?

2 A. It's BoMatt's girlfriend. She was with BoMatt.

3 Q. So --

4 A. She's my cousin, yeah. They're related from different
5 sides of the family.

6 Q. You mentioned at some point that -- and I was a little
7 confused about this -- somebody was snorting Wellbutrin?

8 A. Yes.

9 Q. And who was snorting Wellbutrin, where, and when?

10 A. Star Addison, Tara. The only ones that weren't snorting
11 it was me and Charles.

12 Q. So it was the night Chucky got hit, got --

13 A. Yeah.

14 Q. And you weren't snorting it and he wasn't?

15 A. No.

16 Q. You said that Matthew Whiteplume kicked Chucky a few
17 times. What color -- I know you said socks. What color?
18 What color were the socks?

19 A. White. White with gray tips on them.

20 Q. You mentioned there were two weapons.

21 A. Yeah. That small one that he had was black, that Monty
22 had the first time was black. And then -- because that one
23 was when they were right by that freezer. And then the other
24 one was a big long orange thing with the two things on the
25 bottom. But I didn't see the other part because Arapaho had

1 it in his hand when he was over hitting him.

2 Q. Let's walk through that. So the first weapon defense
3 counsel showed you there was a -- your drawing?

4 A. Yeah.

5 Q. So where was that picked up?

6 A. It was right there in that basement by -- I think there
7 was like a hot water heater over here and some other stuff.
8 It was right there. It was a black thing. It was like a lug
9 thing. It had that knot on it, and you turn it. It was like
10 a lug wrench thing.

11 Q. And who picked that up?

12 A. Monty did.

13 Q. And what did he do with it?

14 A. He gave it to Arapaho.

15 Q. And what did Arapaho do with it?

16 A. He hit Chucky twice in the side of the head with it.

17 Q. And then when did this other -- this other bar come into
18 play?

19 A. Monty took off upstairs, and he came down the steps with
20 it.

21 Q. And how did you -- where were you? How did you see all
22 this?

23 A. I was trying to stop it. I was telling BoMatt to tell him
24 to knock it off. And I was standing there with BoMatt by the
25 end of the steps because that's where me and Chucky were. We

1 were kind of off, like, by ourselves.

2 Q. So how close -- how close were you to Monty when he ran up
3 and came back down?

4 A. I was standing right on the side at the bottom of the
5 steps.

6 Q. So within 5 feet?

7 A. Yeah.

8 Q. And what did you see? What did he have in his hand?

9 A. He had a big long orange bar like that.

10 Q. I would have you look down at your monitor at what's
11 marked as Government's Exhibit 6-1.

12 THE COURT: It's being shown to the witness only.

13 Q. (BY MR. CONDER) It may take a second, Ms. Brown.

14 A. Okay.

15 THE COURT: And, ladies and gentlemen, and anyone in
16 the court, to the extent you have any phones, let's go ahead
17 and make sure that they're on silent.

18 Q. (BY MR. CONDER) Is that a photograph that you're looking
19 at, 6-1?

20 A. Yes.

21 Q. And does that photograph look familiar?

22 A. Yes, it does.

23 Q. And why does that look familiar?

24 A. That's the bar that he was hitting him with.

25 Q. And that's the bar that who was hitting who with?

1 A. Arapaho was hitting Charles with it.

2 Q. And how can you be sure?

3 A. Because I was there, and I seen him do it.

4 MR. CONDER: Your Honor, at this time the United
5 States would move to admit 6-1 and publish.

6 MS. AMRAM: No objection.

7 THE COURT: Exhibit 6-1 will be admitted and may be
8 published.

9 (Government's Exhibit 6-1 received.)

10 Q. (BY MR. CONDER) So is this the bar that Monty went
11 upstairs and got?

12 A. Yes.

13 MS. AMRAM: Objection; leading.

14 Q. (BY MR. CONDER) Ms. Brown, you --

15 THE COURT: Let's back up. I'll sustain the
16 objection. Go ahead and reask the question and in a
17 nonleading form.

18 Q. (BY MR. CONDER) Ms. Brown, when Monty went upstairs and
19 came back down, what did he have in his hand?

20 A. This bar right here.

21 Q. And what did he do with that bar?

22 A. He gave it to Arapaho.

23 Q. And what did Arapaho do with it?

24 A. He started hitting Chucky with it.

25 Q. And how many times did he hit him?

1 A. Four times.

2 Q. How many?

3 A. Four.

4 Q. Four. And where was he hitting him?

5 A. In the face.

6 Q. On December 3, when you were at detox with Matthew

7 Whiteplume and he told you that Lonestar was going to, quote,

8 "F you up" --

9 A. Yes.

10 Q. Who's Lonestar?

11 A. It's their friend, I guess.

12 Q. What's his --

13 A. Lonestar Addison.

14 Q. Lonestar Addison?

15 A. Uh-huh.

16 Q. And was he there that night?

17 A. Yeah. He was there for a little while. I guess he lived
18 next door or somewhere in that neighborhood right there, one
19 of those big houses right by Matt's grandma's.

20 MR. CONDER: May I have a moment, Your Honor?

21 THE COURT: You may.

22 MR. CONDER: No further questions, Your Honor.

23 THE COURT: All right. May this witness be released
24 from any subpoena?

25 MS. AMRAM: Yes, Your Honor.

1 MR. CONDER: Yeah.

2 THE COURT: You may step down, ma'am. You're free to
3 go.

4 The United States may call its next witness.

5 MR. CONDER: Your Honor, the United States would call
6 Matthew Whiteplume.

7 THE COURT: Mr. Whiteplume will come forward and be
8 sworn.

9 (The witness was sworn.)

10 THE COURTROOM DEPUTY: Please state and spell your
11 name for the record.

12 THE WITNESS: Matthew Terrance Whiteplume. Spell it?
13 M-A-T-T-H-E-W T-E-R-R-A-N-C-E, Whiteplume,
14 W-H-I-T-E-P-L-U-M-E.

15 THE COURTROOM DEPUTY: Please state your occupation
16 and your city of residence.

17 THE WITNESS: Right now I'm an inmate.

18 THE COURTROOM DEPUTY: And your residence?

19 THE WITNESS: Riverton, Wyoming.

20 THE COURTROOM DEPUTY: Thank you.

21 MATTHEW TERRANCE WHITEPLUME, GOVERNMENT'S WITNESS

22 DIRECT EXAMINATION

23 BY MR. CONDER:

24 Q. Good afternoon, Mr. Whiteplume.

25 A. I'm sorry.

1 Q. If you could, make sure you speak into the microphone so
2 we can all hear you.

3 Mr. Whiteplume, where are you from?

4 A. I'm from around Riverton, Wyoming. Arapahoe, Wyoming.

5 Q. And did you grow up on the Wind River Indian Reservation?

6 A. Yes. I grew up until about sixth, seventh grade. Then I
7 started going to school at different places.

8 Q. And are you an enrolled tribal member?

9 A. Yes, Northern Arapaho tribe.

10 Q. What's your education?

11 A. 13. Just a year of college. That's all.

12 Q. And where did you go to school? Where did you get the one
13 year of college?

14 A. Clackamas Community College.

15 Q. Where is that?

16 A. In Oregon City, Oregon.

17 Q. What did you do after school?

18 A. Joined the military.

19 Q. What branch of the military?

20 A. The Army.

21 Q. And what'd you do for the Army?

22 A. Infantry.

23 Q. And how long were you in the infantry?

24 A. Seven years, eight months.

25 Q. Were you ever deployed?

1 A. Yes.

2 Q. Where were you deployed?

3 A. I had two overseas tours -- or two combat tours and one
4 overseas tour.

5 Q. Where was those?

6 A. Iraq, Korea, and Iraq.

7 Q. And did you sustain any injuries while in the military?

8 A. Yes.

9 Q. And what are those?

10 A. TBI, traumatic brain injury, and PTSD and anxiety,
11 depression.

12 Q. Let me ask you this: Were you wounded in -- were you
13 wounded in the line of duty?

14 A. Yes.

15 Q. What happened?

16 A. I -- I don't remember. It was -- I hear different
17 stories, but to put it on paper, it was about -- I just got
18 hurt.

19 Q. Was it -- did something explode or something like that?

20 A. Yeah, it was a explosion. They said it was mortar.

21 Q. The mortar?

22 A. Uh-huh.

23 Q. How long have you been out of the military?

24 A. About seven years, going to be.

25 Q. And why'd you leave?

1 A. I got out. I'm -- my grandma was sick, and she was like
2 my mom, but trying to save my marriage too.

3 Q. And, Mr. Whiteplume, you're currently wearing orange and
4 handcuffs. Are you incarcerated?

5 A. Yes, sir.

6 Q. And where are you incarcerated?

7 A. At Natrona County Detention Center.

8 Q. And why are you incarcerated? Have you pled guilty to an
9 event?

10 A. Yes.

11 Q. And did you enter into a plea agreement with the United
12 States?

13 A. Yes.

14 Q. Mr. Whiteplume, I'd have you look at your screen and
15 you'll see what's marked as Government's Exhibit 7-3. Is that
16 a plea agreement between you, Mr. Matthew Whiteplume, and the
17 United States?

18 A. Yes.

19 Q. And did you sign that plea agreement?

20 A. Yes.

21 Q. And did you have a lawyer with you when you signed that
22 plea agreement?

23 A. Yes.

24 Q. And did your lawyer sign that plea agreement as well?

25 A. Yes.

1 Q. And by entering into that plea agreement, did you plead
2 guilty to aiding and abetting second degree murder?

3 A. Yes.

4 Q. Was that what you were originally charged with?

5 A. No.

6 Q. Were you originally charged before that with first degree
7 murder and aiding and abetting murder?

8 A. Yes, sir.

9 Q. And as part of your plea agreement, were you allowed to
10 plead guilty to a lesser included offense of aiding and
11 abetting second degree murder?

12 A. Yes, sir.

13 Q. And have you in fact pled guilty to that charge?

14 A. Yes, sir.

15 Q. And when was that? Do you recall?

16 A. About a week ago.

17 Q. Where was that?

18 A. It was here.

19 Q. And as part of that plea agreement, did you agree to
20 cooperate and testify on behalf of the United States
21 truthfully?

22 A. Yes.

23 Q. And by doing so, are you hoping for a lesser sentence?

24 A. Yes.

25 Q. What is your sole obligation under the plea agreement as

1 to testifying?

2 A. To be truthful and honest.

3 MR. CONDER: Your Honor, at this time the United
4 States would move for the *Davis* instruction.

5 THE COURT: Sidebar, Counsel.

6 (At sidebar.)

7 MR. CONDER: I'm sorry.

8 THE COURT: Help me out. *Davis*?

9 MR. CONDER: The instruction we submitted to the
10 Court that provides the testimony about co-defendants. It's
11 to be considered -- basically that you're not to consider it
12 one way or another, no good, no bad. It's just a witness.

13 THE COURT: I don't have my packet. Do you have a
14 copy of that?

15 MR. CONDER: Yeah. We'll get it right now.

16 MS. AMRAM: I didn't hear the original question.

17 THE COURT: Asking for a *Davis* instruction as to the
18 statements of co-defendant.

19 If you'll grab it.

20 MR. CONDER: Yes, Your Honor.

21 THE COURT: Any objections to that?

22 MS. AMRAM: I know we proposed one that was the --
23 there was one that -- there was a Tenth Circuit one on, like,
24 if --

25 (Reporter interruption.)

1 MS. AMRAM: Oh, sorry. I know we proposed one that
2 was like for either accomplices or co-defendants, to review it
3 with caution. But I'm not sure; that might be something
4 you're supposed to do at the end of the case. I'm not clear.

5 THE COURT: Mr. Conder.

6 MR. CONDER: Your Honor, generally the practice of
7 this district is that the Court would instruct on the *Davis*
8 instruction at the time that this witness testifies so that
9 the jury has that with them now. At the conclusion of the
10 evidence, when the Court instructs them finally, then they get
11 the instruction that Ms. Amram described.

12 THE COURT: All right. I'll read it to them. It's
13 basically the Tenth Circuit pattern instruction. I'll read it
14 now and will tell them they'll got a copy of that in their
15 packet as well.

16 MS. AMRAM: All right.

17 (End of sidebar.)

18 THE COURT: Ladies and gentlemen of the jury, I
19 apologize. The Government has called as one of its witnesses
20 an alleged co-accomplice who was named as a co-defendant in
21 the indictment, as previously noted. The Government has
22 entered into a plea agreement with this co-defendant providing
23 for a recommendation of a lesser sentence than the
24 co-defendant would likely otherwise receive. Plea bargaining
25 is lawful, proper, and the rules of the court expressly

1 provide for it.

2 An alleged accomplice, including one who has entered
3 into a plea agreement with the Government, is not prohibited
4 from testifying. On the contrary, the testimony of an alleged
5 accomplice may by itself support a guilty verdict. You should
6 receive this type of testimony with caution and weigh it with
7 great care. You should never convict a defendant upon the
8 unsupported testimony of an alleged accomplice unless you
9 believe the testimony beyond a reasonable doubt. The fact
10 that -- the fact that an accomplice has entered into a guilty
11 plea to the offense charged is not evidence of the guilt of
12 any other person. Under no circumstances should the evidence
13 of an accomplice's guilty plea be used by you as evidence of
14 the guilt of the defendant.

15 You'll receive a copy of this instruction in the
16 packet that will be given to you at the close of the case.

17 Mr. Conder.

18 MR. CONDER: Thank you, Your Honor.

19 Q. (BY MR. CONDER) Mr. Whiteplume, do you have family on the
20 Wind River Indian Reservation?

21 A. Yes, sir.

22 Q. And who is that? Mom, sister, brothers?

23 A. All my family. My mother, my brothers, my sister, my
24 grandma.

25 Q. And when you live on the reservation, where do you live?

1 Where do you stay?

2 A. Mostly at my grandma's house.

3 Q. And who is your grandma, and what's the address?

4 A. It was Grandma Laura Shakespeare. Address is 331 Great
5 Plains.

6 Q. And is your Grandma Laura still with us?

7 A. No.

8 Q. When did she pass away?

9 A. Last year, several years back.

10 Q. Mr. Whiteplume, do you drink alcohol?

11 A. Yes.

12 Q. And back in 2017 how often did you drink alcohol?

13 A. About three, four times a week.

14 Q. And how did you get your alcohol?

15 A. I get -- I get disability from the military, and I work
16 too, feed cows from time to time.

17 Q. And how much do you think you'd drink on average in a day?

18 A. At least a traveler.

19 Q. So I'm going to show you --

20 THE COURT: Counsel, let me ask you one thing. He
21 said, I believe, "At least a traveler."

22 MR. CONDER: Gotcha.

23 THE COURT: Can you --

24 Q. (BY MR. CONDER) Mr. Whiteplume, what's a traveler?

25 A. It's about the size of a fifth. 750 milliliters or

1 something.

2 Q. So it's the size of alcohol that you'd buy?

3 A. Yes. That, half gallons and stuff.

4 Q. And I would show you what's marked and admitted into
5 evidence as Government's Exhibit 4-2, and I would publish
6 that.

7 THE COURT: Exhibit 4-2 is being published to the
8 ladies and gentlemen of the jury.

9 Q. (BY MR. CONDER) Mr. Whiteplume, do you recognize that?
10 What is that?

11 A. That's the front of my grandma's house.

12 Q. And that's the house at 331 Great Plains?

13 A. Yes, sir.

14 Q. And who lives there?

15 A. My Uncle Juju, my Uncle Loren, my sister, myself.

16 Q. And your Uncle Juju, does he go by another name?

17 A. Edd Shakespeare.

18 Q. Edd?

19 A. Yes, sir.

20 Q. And your sister, what's her name?

21 A. Jori Lamebull.

22 Q. And looking at this photograph marked as 4-2, on the top
23 right, the window on the top right of the house on the far
24 right of the picture, whose bedroom is that?

25 A. It's Loren Shakespeare's.

1 Q. And the next window to the left?

2 A. Edd Shakespeare.

3 Q. And is that the front of the house?

4 A. That's the front of the house, sir.

5 Q. Thank you. I now show you what's marked as Government's
6 Exhibit 4-3. Do you recognize that?

7 A. Yes, sir.

8 Q. What is that?

9 A. That's the back of the house.

10 Q. And so in this photograph, looking at the top right,
11 there's a window. What's that a window to?

12 A. That's a window to the bathroom.

13 Q. And then the window on the top level to the left of the
14 bathroom window, what's that?

15 A. That's my grandma's window.

16 Q. And who stays in your grandma's room if she's passed away?

17 A. Just different people.

18 Q. And what about those windows on the bottom? There's two
19 windows. Where do those windows go to?

20 A. They go to the basement.

21 Q. So when you lived in that house at 331, where did you
22 stay?

23 A. The basement.

24 Q. So the basement was your room?

25 A. Yes, sir.

1 Q. I'm going to show you what's marked as Government's
2 Exhibit 7-4, just you. Do you recognize that?

3 A. Yes, sir.

4 Q. And what is that?

5 A. That's a drawing of the basement.

6 Q. And is that a drawing of your basement?

7 A. Yes, sir.

8 Q. And did you make that drawing?

9 A. No, sir.

10 Q. But is it accurate?

11 A. Just missing a window.

12 Q. It's missing a window. Okay. Where would the window be
13 on there?

14 A. By the washer and dryer.

15 Q. Okay. Other than that, is it accurate?

16 A. Yes, sir.

17 MR. CONDER: Your Honor, at this time the United
18 States would move to admit Government's Exhibit 7-4, with the
19 recognition that there should be a window above the washer and
20 dryer.

21 MS. HUCKE: No objection.

22 THE COURT: Exhibit 7-4 will be admitted and may be
23 published.

24 (Government's Exhibit 7-4 received.)

25 Q. (BY MR. CONDER) So, Mr. Whiteplume, in this basement,

1 this diagram, you indicated there should be a window behind
2 the washer and dryer; is that right?

3 A. It actually should be just like right -- right below the
4 washer and drying when you're looking at the paper.

5 Q. Right across from the other window basically?

6 A. Yes. Yes, sir.

7 Q. Where did you stay in here if you -- did you have a bed?
8 Where did you sleep?

9 A. There was a bed down there at the time.

10 Q. And by "bed," what was your bed? Did you have a frame and
11 a box springs?

12 A. No, just a big mattress.

13 Q. And where was that mattress?

14 A. It was by the nightstand.

15 Q. So over where there's that empty space by the chair on the
16 north -- the nightstand in the -- in the corner there --

17 A. Yes, sir.

18 Q. -- in between the table?

19 A. Yes, sir.

20 Q. Thank you. So who comes over to the house? Who's -- are
21 there regular people that come over and hang out there?

22 A. There's regulars and there's people that -- my uncle's
23 friends and some people I don't even know sometimes.

24 Q. And what do people do when they come over to 331?

25 A. Mostly to drink, do drugs, stuff like that.

1 Q. Do you know Arapaho Oldman?

2 A. Yes, sir.

3 Q. And how do you know Arapaho Oldman?

4 A. He's -- my family took him in. My uncle took him as a
5 brother.

6 Q. How long have you known him, yearswise?

7 A. Since I was a kid.

8 Q. And are you related to him?

9 A. Not by blood.

10 Q. Do you take him as family, though?

11 A. Yes, sir.

12 Q. You guys hang out often?

13 A. Yes, sir. When he's around.

14 Q. Is Arapaho Oldman here in the courtroom?

15 A. I can't see. I can't see him. No, sir.

16 Q. Do you need glasses? I see you squinting.

17 A. I need glasses, sir.

18 Q. You need glasses?

19 A. Yes.

20 Q. Do you have glasses?

21 A. Not -- I got glasses. I see him right there. Sorry. I
22 see his glasses right there.

23 Q. And where is he sitting, and what is he wearing?

24 A. He's right there, head shaven, has glasses on.

25 Q. Did you say head shaven and glasses on?

1 A. Yes, sir.

2 Q. I'm going to show you what's -- let me back up. Let me do
3 this. I'm going to have you look at the screen and what's
4 marked as Government's Exhibit, I believe, 1-2. It's a
5 calendar of November 2017.

6 THE COURT: It's being shown to the witness only.
7 It's already been admitted, though, hasn't it?

8 MR. CONDER: Yes, Your Honor. It's been admitted.

9 THE COURT: I'll go ahead and display it to the
10 ladies and gentlemen of the jury.

11 Q. (BY MR. CONDER) So looking at that calendar, the 23rd was
12 Thanksgiving. Do you recall anything happening on the 26th of
13 November, 2017?

14 A. I had my grandma's memorial dinner.

15 Q. So on the 26th of November you had a memorial dinner for
16 your grandma?

17 A. Yes, sir.

18 Q. Do you remember what you were doing on November 22, 2017?

19 A. Yes. I was recovering. I was sleeping at my grandma's.

20 Q. What were you doing at your grandma's?

21 A. Just sitting there watching TV, drinking.

22 Q. And was it daylight when you were doing this?

23 A. Yes, sir.

24 Q. And who were you with? Was anyone with you?

25 A. Uncle Juju, Uncle Loren. People were coming in, but when

1 I woke up --

2 (Reporter interruption.)

3 A. My Uncle Loren was sitting next to me. That's it.

4 Q. (BY MR. CONDER) So you were there with your Uncle Loren
5 and your Uncle Edd, also known as Juju?

6 A. Yes, sir.

7 Q. What were they doing?

8 A. They were -- they were -- Uncle Edd was in his room.
9 Uncle Loren was sitting next to me, watching TV with me.

10 Q. Was there anyone else there?

11 A. I remember hearing Lonestar Addison and his company with
12 him, Bernadette Brown, in the basement.

13 Q. What were they doing down there?

14 A. I don't know. Drinking most likely, smoking weed.

15 Q. So Bernadette Brown and Lonestar Addison were in the
16 basement, drinking and smoking weed?

17 A. Yes, sir.

18 Q. So that's who was there at the house when it was daylight.
19 What happened when it got dark?

20 A. When it got dark it was pretty much the same people. I
21 fell asleep in between there. I was taking medications for
22 spider bites, but I was drinking too. And I woke up. Uncle
23 Loren was still sitting watching TV with me. I was sitting
24 back and recovering.

25 Q. So you were sitting there, you were taking medication for

1 your spider bites, and you were with your Uncle Loren. Who
2 showed up when it was dark?

3 A. I just -- I just heard footsteps coming up -- footsteps
4 coming up the side of the walkway in front. And then my Uncle
5 Loren got up. He looked out. He seen -- he walked outside,
6 and later -- he later -- Arapaho Oldman opened up the door,
7 pointed down, and said, "You got a bottle?" and asked me for a
8 shot. So I got up, put my shoes on, and I walked outside.

9 Q. When you walked outside, who was out there?

10 A. I know it was Mr. Oldman; Chucky, Charles Dodge; and some
11 other people, but those are the two ones I noticed.

12 Q. So Arapaho Oldman was there and Charles Dodge was there?

13 A. Yes, sir.

14 Q. Did you know Charles Dodge?

15 A. Not before, no. I seen him around but never -- a couple
16 words here and there but really wasn't friends to hang out and
17 stuff.

18 Q. And did you talk to Chucky?

19 A. Yes. I was talking to him. He showed me his -- he was
20 talking to me -- he was working out at Arapahoe Ranch, and he
21 showed me his work gloves. We went around and used the rest
22 room, and he talked about going back to work.

23 Q. So he showed you his gloves, and you talked about work?

24 A. Uh-huh.

25 Q. How were things going? Were you getting along with him?

1 A. Yes. We were -- we were standing there talking, getting
2 along.

3 Q. Was Chucky a regular over at your house, over at 331?

4 A. No.

5 Q. Had he ever been there before?

6 A. If he was ever there before, he wasn't there with me.

7 Q. So that was the first time you'd seen him at 331?

8 A. That was the first time I'd seen him at 331.

9 Q. Did he show up with Mr. Oldman?

10 A. Yes, sir.

11 Q. And do you know how they got there?

12 A. I just heard a vehicle. I didn't see a vehicle, though.

13 Q. So did you hear a vehicle?

14 A. Yes, sir.

15 Q. So you heard a vehicle and then --

16 A. And then they walked up. So they came in one vehicle. My
17 Uncle Loren was the one that looked out.

18 Q. So once Chucky's there, the defendant, Mr. Oldman, you,
19 who else is there? What are you guys doing?

20 A. It was me, Juju, Loren. Someone was passing around a
21 joint, smoking outside. Fatima walked up for a little while,
22 and then she walked away. Somebody had the idea to go into
23 the basement.

24 Q. And who is Fatima?

25 A. Fatima Addison is my auntie.

1 Q. And where does she live?

2 A. She lives at the house right next to us. There's an empty
3 spot there but then her house.

4 Q. So she's the next-door neighbor?

5 A. Yes.

6 Q. Is everyone drinking alcohol outside?

7 A. Except for my Uncle Edd Shakespeare. He was smoking weed.

8 Q. Was Chucky smoking weed?

9 A. Yes, he was smoking weed too.

10 Q. Do you guys recall what you were drinking? You were
11 drinking alcohol, but what kind?

12 A. When they showed up -- when they come in that -- when they
13 showed up, when they pointed at the ground, it was vodka, red
14 cap vodka. Opened up the vodka, used the rest room, came
15 around the corner at the feet of the entrance right there at
16 the very beginning. That's when -- that's when we started
17 talking to him and he talked to me about his work and all this
18 and that. But between me and him we drank a pint of BV.

19 Q. And that would be you and Chucky?

20 A. That would be me and Chucky.

21 Q. Who brought the vodka? Do you know? The red cap.

22 A. I don't know. It was already by the door when I came out.
23 Most likely it was Mr. -- Mr. Oldman and Chucky.

24 Q. And how was the mood out there? Everybody getting along?

25 A. Yes. Everybody was getting along then.

1 Q. Did you guys stay outside? What'd you do?

2 A. No. We went into the basement.

3 Q. Who went into the basement?

4 A. Most of us did. Most of us went to the basement.

5 Q. And was there anybody else in the basement when you got
6 there?

7 A. When we got there, yeah. There was already some people in
8 the basement, people walking down. And me -- I could explain
9 it from my point of view. There's a lot of people there and
10 then other people that was having -- I can explain from my
11 point of view.

12 Q. So you went down in the basement?

13 A. I went down in the basement, and there was other people
14 down there. There was some -- people were just talking and
15 bullshitting and shit. I'm sorry for cussing. I'm sorry for
16 cussing. But when we was down there drinking and everything,
17 everybody -- you know, everybody was getting along. I mean,
18 you couldn't really tell how much time was going by, how much
19 time was there.

20 But somebody had an idea to make a toddy, so I went
21 upstairs to make a hot toddy, and I was boiling water. And
22 over there I was just sitting back, and you could just hear
23 people conversating amongst themselves. And I wasn't even --
24 I just was waiting for the water to get done. And then once
25 the water got done, I poured it in, I put sugar in it, and

1 then I walked downstairs. I -- I really couldn't give a full
2 example of how long that water took to boil, but it took -- it
3 took a while.

4 Q. Let me stop you there, Mr. Whiteplume. So why did you go
5 upstairs to boil water?

6 A. To make a hot toddy.

7 Q. And why were you having -- why a hot toddy?

8 A. It just helps get it in your bloodstream quicker, better.
9 You can hold it down.

10 Q. Is that why you add sugar to it?

11 A. Yes, sir.

12 Q. So does it -- do you think it gets you drunk quicker or
13 drunk better?

14 A. Just helps your stomach hold down the liquor.

15 Q. So you went upstairs to boil water to make a hot toddy.
16 Did you do that in the kitchen of the house at 331?

17 A. Yes, sir.

18 Q. And how long do you think that took?

19 A. I don't know, sir.

20 Q. A couple minutes?

21 A. It took a while, sir, for the water to boil.

22 Q. So once you got the water boiled, what did you do?

23 A. I put it -- I put it in a cup, put sugar in it.

24 Q. Did you -- when you went upstairs to boil this and -- boil
25 the hot water for your toddy, did you take a bottle of alcohol

1 with you?

2 A. No, sir.

3 Q. All right. So once you boiled the water, you put it in
4 your cup with the sugar, what do you do?

5 A. Walk it back downstairs.

6 Q. And what do you see when you go downstairs?

7 A. I walk -- when I walk downstairs and I get downstairs, I
8 put the cup on the table. And as I started going to the -- as
9 I started going to the table with -- with -- looking for my
10 pill bottles, my sleeping pills. And when I was -- when I
11 looked up, I just seen -- I just seen Mr. Oldman punching
12 Chucky Dodge. He already had a belt around his neck and
13 grabbing him by the hair.

14 Q. And how's the lighting in that basement?

15 A. There's just lighting. There's one that works by the
16 stairs.

17 Q. So do you recall where was Mr. Oldman standing with
18 Chucky?

19 A. He was standing by the chair.

20 Q. And I would show you Government's Exhibit Number 7-4. So
21 he was standing by the chair on the top of that diagram?

22 A. Yes, sir. He was standing to the lower left corner.

23 Q. And describe, what did you see?

24 A. I seen him -- like I said, he was holding him by the hair
25 with a belt around his neck. And then I asked why he was

1 beating him up, why he was hitting him, and he said that was
2 one of the guys that jumped me.

3 Q. And let's back up here. What happened to you? You got --
4 what do you mean you got -- that somebody jumped you?

5 A. That -- he said that that was one of the guys that jumped
6 me.

7 Q. Okay. Were you jumped? Did you get beat up earlier?

8 A. Yes, sir.

9 Q. What happened to you, and when did it happen?

10 A. I really don't remember the days that it happened, but it
11 was a few weeks before.

12 Q. Had somebody beat you up a few weeks before?

13 A. Yes, sir.

14 Q. Did you get hurt?

15 A. Yes, sir.

16 Q. And so you said Mr. Oldman has -- Chucky has a belt around
17 his neck?

18 A. Yes.

19 Q. And he -- is he hitting him?

20 A. Yes.

21 Q. With his fists?

22 A. With -- when I see him, when he hit him, he hit him with
23 his hand, like the throat.

24 Q. And he -- what did he tell you? Mr. Oldman. What did
25 Mr. Oldman tell you?

1 A. He told me that this is one of the people that jumped me.

2 Q. And so once you heard that, what did you do?

3 A. I got mad. It put me in the hospital. So I was mad. I
4 went and as I punched him -- as I was punching him, I was
5 asking him if he was one of the people that jumped me and if
6 so, I was asking him who he was with.

7 Q. How many times did you punch him?

8 A. Seeing how mad I was, it was quite a few. I was asking
9 him the questions.

10 Q. Where were you punching him?

11 A. I was punching him with blows along the jawline.

12 Q. Were you punching him in the face and head?

13 A. I was punching him behind the ear and body shots. It's
14 a --

15 (Reporter interruption.)

16 THE COURT: You said it's a -- you said punching him
17 behind the ear and body shots. It's a --

18 THE WITNESS: It's an earshot.

19 THE COURT: All right.

20 THE WITNESS: It's a nerve behind the ear. Boxers,
21 you know, when they get punched in the jaw.

22 THE COURT: It's a nerve shot? There's a nerve?

23 THE WITNESS: Yes.

24 Q. (BY MR. CONDER) What was Chucky doing when you were
25 hitting him?

1 A. He was -- he was reaching for that -- he was reaching
2 for -- behind his -- behind his -- kind of like -- I can't --
3 I'm sorry. I got this on. I can't give a full description.
4 But he was reaching up, trying to grab Arapaho's hand.

5 Q. So he was trying to grab the belt around his neck?

6 A. Yes, sir.

7 Q. And so how did Mr. Oldman have the belt on Chucky's neck?
8 Was it like a dog leash? Is that what it looked like?

9 A. It was just a regular brown belt.

10 Q. And he had it wrapped around his neck?

11 A. Uh-huh.

12 Q. And holding it from above?

13 A. Yes, sir. He was -- he was still -- he was still sitting
14 down in the chair.

15 Q. What did you tell Chucky? Did you tell him he could
16 leave? Did you talk to Chucky about -- did you question
17 Chucky if he beat you up?

18 A. Yes. I questioned him. I questioned him, asked him when
19 I was punching him.

20 Q. And what was his response?

21 A. He was -- he was telling me it wasn't him, it wasn't him.
22 And I was still asking him while I was punching him. And then
23 we're talking about still at the chair; right? Because I
24 punched him on more than one occasion. I kicked him.

25 Q. Gotcha. So let's talk about that. Were you angry?

1 A. Yes, very.

2 Q. Did you --

3 A. I --

4 Q. Did you want to hurt Chucky?

5 A. I wanted to find out who was with him.

6 Q. Did you tell him that he wasn't going to leave the
7 basement until he told you?

8 A. That was -- yes. But he was already moved around by then.
9 There had been more than one occasion by the time I asked him
10 that question.

11 Q. Okay. So walk us through what happened. Go ahead and
12 tell us. Mr. Oldman has a belt around his neck. You start
13 punching. Walk us through what happened from there.

14 A. He's by the chair. He had him right there by the chair.
15 I punched him. I was punching him and stuff like that and
16 everything. And he told me to go check and make sure the door
17 was closed. So I go up and check, but the door is closed
18 right there. And I come back down, and he's by the table and
19 by that first round pole. He's right there. And I come
20 around, and Arapaho already has him right there.

21 And so I stomped him a couple more times. And I told
22 him -- I asked him -- I kept asking him who all was with him.
23 "Who all was with you?" And -- and he wouldn't tell me. He
24 told me it was two youngsters, two youngsters that beat me up.

25 And after a while, after a while after seeing them,

1 you know, it sounded like somebody came through the door
2 again, so I went back up and checked the door again. And I
3 came back down, and he was kind of by the dryer, by the dryer
4 and that pole.

5 And I asked him again why he -- there and then,
6 that's when it kind of hit me, you know. I never seen this
7 guy be a knucklehead. I've seen a lot of knuckleheads, you
8 know, on the res, people doing this and that, you know. And
9 when I see this guy, he's always talking about working on a
10 ranch or doing something. I never heard of him jumping
11 anybody, beating anybody up, or acting like a gangster. So --
12 but right around then Arapaho pulls out a knife.

13 Q. What did this knife look like?

14 A. It looked like -- I couldn't see the handle. He had a
15 wash rag around it.

16 Q. And then what happened? What did Mr. Oldman do with the
17 knife?

18 A. I tried to -- I tried to stop him. By then some people
19 were telling him to stop by then. You know, he slammed me.

20 Q. What did he do to you?

21 A. He slammed me.

22 Q. What does that mean?

23 A. He just grabbed me by my shoulders. I went up, tried to
24 get help, and he slammed me, you know.

25 Q. And let me be clear on this. Mr. Oldman slammed you?

1 A. Yes, sir.

2 Q. And by that you mean, did he hit you or shove you?

3 A. No. He slammed me, like grabbed me by the shoulder and
4 slammed me.

5 Q. So he rammed his shoulder in you?

6 A. Two hands on my fucking shoulders. Sorry.

7 Q. Gotcha. So what happened when Mr. Oldman slammed you?

8 A. That -- I went up to go get help. But before that -- see,
9 I'm trying to talk to you guys. When I'm hitting him and I'm
10 kicking him and -- but when I took him from the chair, when I
11 went up and I came back down, he was by the table. But then
12 that's when I was kicking him.

13 Arapaho Oldman also instructed me to put a blanket up
14 by the window right there. I put a blanket on the window and
15 stuff and come back. And I'm still asking him who was all
16 with him and everything like that, and I was still kicking
17 him. I was, like, you know stomping him, not a kick.

18 And then I come back down after that to that spot
19 right there. After he slammed me, I ran back up. I went to
20 go get my Uncle Loren just sitting in the -- sitting in the
21 white sofa. He was acting like he was asleep. I could tell
22 he wasn't asleep. He crossed his legs and crossed them back
23 over. So I went back down. I mean, my uncles, I was raised
24 by them. I drank with them. I mean, he sucker-punched me too
25 sometimes. He fights me too sometimes when he's drunk.

1 MS. HUCKE: Objection, Your Honor.

2 THE COURT: I'll sustain at this point.

3 Q. (BY MR. CONDER) And let's back up, Mr. Whiteplume. So I
4 want to make sure we're all talking about the same thing here.
5 So originally you come down from the hot toddy?

6 A. Yes, sir.

7 Q. You see Mr. Oldman with the belt around Chucky's neck over
8 by the chair?

9 A. Yes, sir.

10 Q. He tells you that this is one of the guys that jumped you,
11 and you start punching him on the body and the head and the
12 ear?

13 A. Yes, sir.

14 Q. And at that time -- and you're asking Chucky about if he
15 jumped you, if he's one of the ones that beat you up?

16 A. Yes, sir.

17 MS. HUCKE: Objection, Your Honor. Leading.

18 THE COURT: Well, I'll allow some guidance. We've
19 gone over this testimony. I'll overrule the objection at this
20 point. Go ahead.

21 Q. (BY MR. CONDER) So you moved from the -- you mentioned
22 that Mr. Oldman and Chucky moved from the chair over closer to
23 the table and that first pole, that circle there in front of
24 the furnace; is that correct?

25 A. No. He was by the stairs and that first pole right there.

1 Q. Downstairs --

2 THE COURT: Counsel, let me ask -- sir, where are the
3 stairs?

4 THE WITNESS: When you come down, the furnace is
5 right here and the pole is right here. This is one of the --
6 somewhere there actually.

7 THE COURT: So it's next to the furnace?

8 THE WITNESS: No. It's right here. It's right
9 around here.

10 THE COURT: All right.

11 A. That first pole, that table, that's what I was talking
12 about. If I could see the pictures, I could show you better.

13 Q. (BY MR. CONDER) Okay. Let's hold on a second,
14 Mr. Whiteplume. We're going to zoom in. Are those little
15 lines there the stairs?

16 A. That's the stairs.

17 THE COURT: All right. Thank you.

18 Q. (BY MR. CONDER) Thank you. So you move from the chair to
19 another spot in the basement, over where you just described,
20 close to the stairs. So what happens there?

21 A. (No response.)

22 Q. Let me stop right there. During this time from the chair
23 to the second part -- so there's the first part and now the
24 second part -- does Mr. Oldman say anything to Chucky? Is he
25 talking to him?

1 A. Yes, but I didn't hear what he was saying to him.

2 Q. Gotcha. So go ahead and tell us about the second part,
3 after the chair and now --

4 A. After -- after I go up and check the door, turn off the
5 light, I come back down, and that's when he was laying there.
6 He's dragging -- he's taking him -- he's getting him -- how
7 he's getting him there, I don't know. I don't know if he's
8 dragging him. I don't know if he's getting up and walking by
9 himself or pushing him, but he -- he was moving him around.

10 And he -- when he told me to put that blanket up, I
11 put that blanket up. I put it on the blanket -- on the house
12 right there because it's right by the porch. It's right by
13 the street. So when I come back and I'm kicking him, that's
14 when I'm still asking him. I'm still asking him who all was
15 with him, who he was with. And that's when he started telling
16 me it was two youngsters. I don't know how he heard it was
17 two youngsters.

18 Q. So then what happened? He tells you -- Chucky tells you
19 that it wasn't him; it was some youngsters. What happens
20 after that?

21 A. It sounded like -- I said -- that's when I pointed out it
22 sounded like the door opened. The door came open. I went
23 back to that door because that door, it blows open. There's
24 no -- there's no handle there, no knob or nothing that goes
25 into the door. So I went back up and checked the door again,

1 and I seen him. He moved him again. He was by that dryer and
2 by -- that's the third time. That's the third time. And I
3 punched him several more times, started asking him -- asking
4 him, you know, who was with him. And around that time, around
5 everything, you know, he's not telling me because he didn't do
6 it. I mean, I was -- I was pissed when I started hitting him
7 and asking him questions.

8 Q. So at that time, Mr. Whiteplume, you're punching your --
9 still punching and kicking Chucky?

10 A. Yes, sir.

11 Q. And what's Mr. Oldman doing?

12 A. He's just -- when I step back and I -- I finally stop,
13 stopped kicking and stopped punching him, and I asked him
14 again, and that's when I seen the knife. That knife, like I
15 said, the knife, I couldn't see the handle. It had a wash rag
16 around it.

17 Q. And what did you think when you saw the knife?

18 A. I'm thinking, oh, shit. Like I said, it was an, oh, shit
19 moment for me. I just -- this shit is going to start getting
20 real.

21 Q. So before that time, before Mr. Oldman had a knife in his
22 hand with this rag around it, had he said anything to you or
23 to Chucky about what was going on, about anything? Was he
24 talking? What was he saying?

25 A. Well, all I heard was a couple times when I was kicking

1 him, I heard, "Get him. Kick him." But I was -- I was
2 focused. I was mad.

3 Q. Did he say anything -- so you said at some point during
4 all this you told Chucky he wasn't leaving until he told you
5 who helped him; is that right?

6 A. That's right.

7 Q. And at some point when you're down in the basement from
8 this first, second, the third attack, did Mr. Oldman say
9 anything about Chucky leaving?

10 A. No. By then -- by then he's really -- he was already
11 saying, "This motherfucker's going to die tonight."

12 Q. And who said that? Mr. Oldman said that?

13 A. Mr. Oldman said that.

14 Q. Did he say that before he pulled out the knife?

15 A. No.

16 Q. Once he pulled out the knife?

17 A. Once he pulled out the knife, I know shit's getting real
18 and everything.

19 Q. But let me ask you this: So when did he say, "This MFer's
20 going to die tonight"? When was that said? Was that after
21 the knife or later in the evening?

22 A. No, that was -- that was around that time frame.

23 Actually -- no. It was around that time frame when he started
24 saying that, but he's saying it throughout the whole night.

25 Around that third incident is when I could hear stuff.

1 Like -- like I said, I'm pissed. I'm all liquored up. I've
2 been taking pills for my spider bites. I mean, when that's
3 going on, when that's going on and I seen the knife and I seen
4 everything, like I said, oh, shit. That's when, you know, I
5 put my hand across his chest, and he slammed me. I don't know
6 if that was like a fucking sign of disrespect or -- I'm sorry
7 for cussing.

8 Q. So once you got slammed, you --

9 A. Like I said, from then and there -- I don't know if I'm
10 jumping ahead of you. I feel like I'm jumping ahead of you
11 all the time.

12 Q. I just want you to tell me what happened. So when
13 Mr. Oldman pulls out a knife, you try to put your arms across,
14 he slams you. Is that when you went to get help from your
15 Uncle Loren?

16 A. Yes, sir.

17 Q. So did your Uncle Loren come help?

18 A. No, he didn't come help.

19 Q. So what did you do?

20 A. I went back down.

21 Q. What'd you see when you went back down?

22 A. When I came -- when I got down, he had him dragged back by
23 the table again. I don't know. See, it's not just -- because
24 these situations -- this didn't happen like I go up and I go
25 back down. I'm going up and I'm trying to talk to people.

1 I'm trying to get them to come help. They're not moving.
2 They're not budging. They're acting like they're asleep. So
3 I'm explaining the situation. I don't know if I'm getting
4 ahead of him or if I'm losing you guys in this conversation
5 too.

6 Q. Mr. Whiteplume, just try to focus on just answering the
7 question. So when you go back upstairs, you talk to your
8 Uncle Loren. He won't help you. You go back downstairs. You
9 said Mr. Oldman had moved Chucky?

10 A. Yes, sir.

11 Q. Where did he move him to?

12 A. He had moved him back by that table by the stairs.

13 Q. Okay. So he's by the table. What do you see? What's
14 going on? Just tell us what's going on. What do you see?

15 A. I see -- when I come back down that time, I come back down
16 and I look, and all I see is a shadow. It's a figure of him,
17 but I see him standing over him. He had a weapon in his hand.
18 I see two swings. I think, oh, shit. I go back upstairs to
19 my Uncle Juju. My Uncle Juju's not drinking. He's not a
20 drinker. He's probably the only one that could try to talk
21 some sense into him.

22 Q. So did your Uncle Juju help you?

23 A. No.

24 Q. What'd he tell you?

25 A. He really didn't say nothing. He just kind of pawned it

1 off as -- pawned it off as, "Shit, somebody's getting beat
2 up."

3 Q. So he didn't come help you?

4 A. No, he didn't come help he.

5 Q. So where did you go? Your Uncle Edd, your Uncle Juju, he
6 won't help you. So where do you go? What do you do?

7 A. I go back down.

8 Q. What do you see when you go back down?

9 A. When I go back down, it's -- he's pretty fucked up.
10 Arapaho's talking to whoever he's talking to. I see he's
11 fucked up.

12 Q. Let me stop you there. Who is "he"? Are you referring to
13 Chucky?

14 A. Yes --

15 Q. And --

16 A. -- Chucky.

17 Q. And what's wrong with him? Like, is he -- you said he's
18 F'd up, but what's wrong with him? Describe what you see.
19 Like what does his face look like? What's wrong with him?

20 A. I could just -- I could just tell after the window --
21 after I locked that window -- there's no light in there. The
22 light is on this side. There's a beam right there. I don't
23 know if you guys looked at all the pictures. There's a beam.
24 You can see shadows and stuff by where that light is.

25 He -- he's fucked up. He's trying to get up.

1 He's -- I'm sorry for cussing, but he was --

2 THE COURT: Mr. Whiteplume, as opposed to the F word,
3 can you physically describe what the situation was that you
4 observed him to have.

5 A. He was -- he lost his equilibrium. He couldn't keep his
6 balance. He couldn't get on all fours. He's trying -- he's
7 trying to --

8 Q. (BY MR. CONDER) He's trying to get up? Chucky's trying
9 to stand up?

10 A. He's laying there. He gets up and goes down. He's -- I
11 mean, you guys ever see anybody get knocked down and they're
12 trying to get up? They fall back over.

13 Q. That's what Chucky was doing?

14 A. Yes.

15 Q. And so what did you do next? Just tell us. You see that
16 and -- let me back up. What's Mr. Oldman doing?

17 A. He's -- I don't know. He's talking to other people that
18 was there. My focus wasn't on the other people.

19 Q. So Mr. Oldman's talking to other people. You don't know
20 who he's talking to?

21 A. He was talking to Lonestar. He was talking to Bernadette.

22 Q. So what do you do?

23 A. I'm focused on -- I'm thinking, oh, shit, you know, like,
24 what's going to happen? I mean, why's he talking to them over
25 there and talking and everything? You know, I don't -- the

1 only thing I could think of was get him out of sight, out of
2 mind. By doing that, get him out of sight, out of mind. The
3 crawl space is the only thing right there. They were standing
4 by the stairs, the only way up, the only way out. So I'm just
5 trying to get him out and everything and put him in the crawl
6 space. He just couldn't get in there on his own. Once I got
7 him in there, you know, kind of just help him lay down or
8 whatever. It's cold down there. I was trying to get him out
9 of sight, out of mind.

10 Q. So, Mr. Whiteplume, let me interrupt you there. How did
11 you get Chucky into the crawl space? Was he able to move a
12 little bit on his own? Was he able to help himself a little
13 bit?

14 A. Yes. Yes, sir.

15 Q. So between -- was he fully able to just hop right up and
16 jump in or --

17 A. No, he wasn't able to fully hop right up and jump in.

18 Q. But he did help you a little?

19 A. He helped himself. I helped him a little.

20 Q. Okay. You helped him in there. So once you help Chucky
21 in the crawl space, what do you do?

22 A. Give him a blanket, tell him I'm going to get him to the
23 hospital in the morning.

24 Q. Did you shut the crawl space door?

25 A. I shut the crawl space door.

1 Q. Where'd you go?

2 A. I went and joined the party. It was in a party. I was
3 thinking, oh, shit. I don't have my own cell phone then. I
4 had to go up and take a couple more shots. And I don't know
5 how many times -- I don't know how -- I don't know how much
6 time goes by that I was sitting back there in the living room
7 drinking.

8 Q. And let me ask you, was -- who else was upstairs? You
9 were doing this upstairs, so did you go upstairs?

10 A. Yes. It was me, Loren, and Arapaho at that time.

11 Q. So Arapaho came upstairs with you once Chucky was in the
12 crawl space?

13 A. Yes, sir.

14 Q. And then you were drinking with Loren and Arapaho?

15 A. Yes, sir.

16 Q. Do you recall what you were drinking?

17 A. We just poured it into a cup. It was vodka.

18 Q. So what happened when you guys were sitting there
19 drinking?

20 A. I don't know. It was -- I don't know how much time went
21 by. We heard a commotion and, like, stuff move downstairs and
22 then go back downstairs and -- Arapaho goes back downstairs,
23 and I go in behind him. And when we got down there and we
24 looked, Chucky was coming out of the -- coming out of the
25 crawl space.

1 Q. And so what happened when -- what did you see next when
2 Chucky's out of the crawl space? What happened?

3 A. I'm thinking, oh, fuck. I'm sorry. It's -- it's -- I
4 don't know what to do for him then. Arapaho already seen him.

5 Q. So what did Arapaho do? What did you see?

6 A. When I seen he was getting out, Arapaho kind of pulled him
7 out of the crawl space too.

8 Q. How'd he do that?

9 A. Just pulled him, yanked him out. He's already about
10 middle way through by his waist. Did you guy see pictures of
11 the crawl space?

12 Q. Mr. Whiteplume, so Mr. Oldman pulls him the rest of the
13 way out?

14 A. Yes, sir.

15 Q. And then what did Mr. Oldman do? What happened?

16 A. I'm looking, like, damn. It's going -- it's going to
17 happen. And he grabs him by the hair, puts him back on his
18 knees. And I know he's talking to me right there, but then he
19 hands me a knife, tries to hand me a knife, told me to handle
20 my business. I couldn't do it. I couldn't do it.

21 Q. And so what happened next? What did Mr. Oldman do?

22 A. He told me to look away, go upstairs. He put the knife
23 around his neck. I go so far up the stairs. I turned around
24 and looked back, and he had the knife by his throat. I see
25 him make four or five tugging motions.

1 Q. Did Chucky die there?

2 A. He died right there.

3 Q. And let me back you up a little bit. So you said you --
4 you were drinking with Mr. Oldman and Loren, and then you
5 heard a commotion downstairs?

6 A. No. I'm drinking with Loren and Arapaho.

7 Q. Gotcha. Thank you. And you hear a commotion downstairs?

8 A. Yes.

9 Q. And Mr. Oldman gets downstairs before you do?

10 A. Yes. I follow him down.

11 Q. And so did you see Mr. Oldman with a knife?

12 A. Yes. He was trying to hand it to me.

13 Q. And what did the knife look like?

14 A. It was -- the base of it, I couldn't see the handle. The
15 top part of it was wooden, like a regular steak knife.

16 Q. Like from a house --

17 A. Yeah.

18 Q. -- like a regular steak knife?

19 A. It was just a regular steak knife. I don't know how to
20 explain it.

21 Q. Do you recall what color the handle was?

22 A. No. It was too dark. Like I said, I just seen the --
23 seen the wooden part.

24 Q. Was the knife wrapped in anything?

25 A. It was wrapped in a washcloth.

1 Q. And what part of the knife was wrapped in a washcloth?

2 A. The handle.

3 Q. The handle was?

4 A. Yes, sir.

5 Q. Was Chucky saying anything when he was trying to get out
6 of the crawl space?

7 A. No. He was just trying to get out of the crawl space.
8 But while Arapaho was grabbing him, he kept saying, "Just let
9 me go. Let me go, Arapaho, and I won't tell on you."

10 Q. How many times did he say that?

11 A. About three, four.

12 Q. And when Arapaho -- when Mr. Oldman handed you the knife,
13 what did he say?

14 A. He tried to hand me the knife and told me to handle my
15 business.

16 Q. What does that mean, handle your business? What did
17 you --

18 A. He wanted me to -- wanted me to kill him.

19 Q. Because you were the one mad at him?

20 A. No. He told me to handle my business, but I couldn't do
21 it. I pushed his arm away.

22 Q. Did you ever stab Chucky?

23 A. No, I never stabbed Chucky.

24 Q. Did you cut his throat?

25 A. No, never cut his throat.

1 Q. Did you hit him with a weapon?

2 A. No, I didn't hit him with a weapon.

3 Q. But you hit him?

4 A. I punched him. I kicked him.

5 Q. And stomped him?

6 A. Stomped him.

7 Q. And we're going to back up a little bit. You talked --
8 when you were kicking and stomping Chucky for the first time,
9 did you ever hear Mr. Oldman or anybody else in the basement
10 say anything, to get something?

11 MS. HUCKE: Objection, Your Honor. Leading.

12 A. I heard somebody --

13 THE COURT: Hold on, sir.

14 Restate the question.

15 Q. (BY MR. CONDER) Mr. Whiteplume, when you were kicking and
16 stomping Chucky for the first time, did Mr. Oldman say
17 anything to you or anyone else in the basement?

18 A. He was talking to somebody. I was too busy stomping. He
19 said, "Go get --"

20 (Reporter interruption.)

21 THE COURT: You said you were busy, and he said to go
22 get --

23 THE WITNESS: The equalizer.

24 Q. (BY MR. CONDER) What's an equalizer?

25 A. It's something my grandpa always told us. You're walking

1 around and people are trying to beat you up or something, get
2 an equalizer. Get a stick or a rock or whatever, equalize the
3 situation.

4 Q. Who did Mr. Oldman say that to?

5 A. I was stomping him. The only person next to him could
6 have been Monty Tabaho.

7 Q. Did Monty go get anything?

8 A. I don't know if he went and got anything. I was focusing
9 on stomping him. I was focused on getting questions out of
10 him. If he went up there and got something, he probably did.

11 Q. And moving forward a little bit, you said you saw
12 Mr. Oldman at one point standing over Chucky, hitting him.
13 Did you see that?

14 A. See what?

15 Q. So when you went to get help from your Uncle Loren -- let
16 me ask it this way. Did you see Mr. Oldman hit Chucky with a
17 weapon?

18 A. Yes, sir.

19 Q. How was he doing it?

20 A. He was -- he was standing over him, hitting him.

21 Q. And how many times?

22 A. I don't know. I only seen him twice. When I seen him
23 using the weapon, I tried to go get Juju, like I said.

24 Q. So, Mr. Whiteplume, Arapaho tries -- Mr. Oldman hands you
25 the knife, tries to hand you the knife to handle your

1 business. He does what he does. When Chucky's dead, what do
2 you guys do?

3 A. Just cover him up. Everybody's ready to go. Everybody's
4 ready -- when I followed Mr. Arapaho -- when I followed
5 Mr. Oldman down there, the people I chased out of there was
6 Bernadette Brown, Lonestar Addison. It was only me and
7 Arapaho down there -- me and Arapaho and Chucky.

8 Q. Mr. Whiteplume, when Chucky's dead, what did you cover him
9 with?

10 A. Covered him with whatever was there. If you guys seen the
11 pictures, you guys know --

12 Q. Mr. Whiteplume, was he on the floor?

13 A. He was on the floor.

14 Q. Okay. And what did you do? You covered him with
15 something, left him on the floor? Where did you go?

16 A. By then I was already blanking in and out, blanking in and
17 out then. I was drinking throughout the night. I was just --
18 everybody went upstairs. Everybody left. Everybody was
19 freaking out. I don't -- it was crazy.

20 Q. Did you go anywhere with Mr. Oldman that you remember?

21 A. I don't -- I don't remember going over to Fatima's. I
22 remember walking back from Fatima's. I remember seeing the
23 sun.

24 Q. So was Mr. Oldman with you?

25 A. Yes, Mr. Oldman was with me.

1 Q. So you don't remember walking over to Fatima's, but you
2 remember walking back?

3 A. I wasn't at Fatima's. I was over across the street at
4 Sitting Eagle's.

5 Q. You remember walking back from Sitting Eagle's?

6 A. Yes.

7 Q. Where'd you walk to?

8 A. Back to my grandma's.

9 Q. Was Mr. Oldman with you?

10 A. Yes, sir.

11 Q. And what did you guys do once you got back?

12 A. Drinking.

13 Q. What were you drinking?

14 A. Vodka.

15 Q. Red cap?

16 A. Yes, sir.

17 Q. So what were you guys talking about? Were you talking
18 about the dead body in the basement?

19 A. He was talking about he was going to get rid of it.

20 Q. Did you decide who was going to get rid of it?

21 A. He was going to get rid of it.

22 Q. Mr. Oldman was going to get rid of it?

23 A. Yes, sir.

24 Q. Is that what he told you?

25 A. That's what he said.

1 Q. Did he?

2 A. No.

3 Q. So you guys are sitting there drinking red cap vodka, and
4 Mr. Oldman said he'd take care of the body, get rid of it.
5 What -- what do you guys do next?

6 A. Everybody was drinking. Everybody was leaving. I mean,
7 this -- this house is like a party house. You seen it; right?
8 There's nothing around there.

9 Q. Mr. Whiteplume, did Mr. Oldman leave when you were
10 drinking? Did you go your separate ways that night?

11 A. Yes, we went our separate ways. He left before I even --
12 before I even woke up. My Uncle Juju woke me up.

13 Q. Where were you sleeping?

14 A. I was sleeping downstairs.

15 Q. On your mattress?

16 A. Yes, sir.

17 Q. And how did your Uncle Juju wake you up?

18 A. He tapped me on my leg.

19 Q. What did he tell you?

20 A. "That guy's gone. You got to go." And then I asked him
21 where everybody went. He said, "Everybody left." He said,
22 "Arapaho left a couple hours ago."

23 Q. So what'd you do?

24 A. Get up and I leave.

25 Q. And what did you do over the next few days?

1 A. Drink.

2 Q. Drank more than normal?

3 A. Drank more than normal, whatever I could drink.

4 Q. Were you still sleeping in the basement, spending the
5 nights there?

6 A. Not from the time -- not every night.

7 Q. But some nights?

8 A. Some nights.

9 Q. Was the body still there?

10 A. Yes, the body was still there.

11 Q. What'd you think about that?

12 A. I'm thinking, "Oh, shit, he's not coming back for the
13 body." I mean I -- I -- I was drinking to get drunk and
14 forget about the situation. He said that he was going to burn
15 down my grandma's house, so the only reason I kept going over
16 there every single day was to make sure the house wasn't
17 burned down.

18 Q. Mr. Whiteplume, did there come a time that you moved the
19 body?

20 A. Yes, there was a time I moved the body.

21 Q. And do you recall when that was? And let me ask it this
22 way. Was it before your grandma's memorial on the 26th?

23 A. Yes, it was before the memorial on the 26th.

24 Q. Was it around that same time, the same day before?

25 A. Yes.

1 Q. And how did you move the body into the crawl space?

2 A. When I came back, it was -- I went down there. My sister
3 and her boyfriend were there.

4 Q. Is that Jori?

5 A. That's Jori.

6 Q. And Monty?

7 A. And Monty.

8 Q. And you went down to the basement. What did you guys do?

9 A. I showed Monty the body and stuff like this. I mean, it
10 started stinking. I'm thinking it -- you know, Arapaho said
11 he's going to come and go get it, but it started stinking too
12 much. I decided to put -- let's put it in the crawl space
13 until Arapaho comes back, until he comes to get rid of it.

14 Q. Did you tell Monty and Jori that you had killed Chucky?

15 A. No. I don't remember. No.

16 Q. Did you tell them that -- what did you tell Monty and Jori
17 about how the body got there?

18 A. I told them about Arapaho, told them...

19 Q. So when you told Monty and Jori to get the body in the
20 crawl space, how did you do that? What did you do?

21 A. Just -- just really wrap it around him, wrap him up, put
22 him in the crawl space. That door -- my sister didn't know
23 about it by then. She didn't know about it, just me and
24 Monty. We tried getting it moved in there, but that door kept
25 coming down. That flap to it kept coming down. And that's

1 when I went up and got my sister and told her to come down and
2 told her to hold the door. She held the door open. Me and
3 Monty got it in and pushed it back there until he was out of
4 sight, out of mind.

5 Q. Did you wear -- did you wear gloves or anything?

6 A. I had them put socks over their hands.

7 Q. Why'd you do that?

8 A. So they wouldn't get no fingerprints.

9 Q. What did you do once Chucky's body was in the crawl space?
10 What did you do? Did you just leave? What did you do?

11 A. I just left.

12 Q. Did you try and -- what did you do with the gloves that
13 were on your hands?

14 A. I instructed -- I instructed my sister and them, my sister
15 and Monty, to put the gloves in trash bags. We put -- I had
16 them put them in there, had them change their clothes. I
17 grabbed a bag, I took it out, and I burned them. And I had
18 that stuff, whatever blood was on, whatever had blood on it,
19 for them to put it in the trash bag.

20 Q. So whatever had blood on it that you could see in the
21 basement, you put it in trash bags, you guys did?

22 A. I put it in trash bags. There was more than one thing
23 that had blood on it.

24 Q. What did you do with that?

25 A. I took them out back and I burned them.

1 Q. Once Chucky's body was in the crawl space, did you ever
2 come back, come back down into the basement?

3 A. That night? After my -- after my grandma's memorial
4 dinner? I went to jail.

5 Q. So did you ever end up back in the basement after that
6 night, after the 26th?

7 A. Yes, I did.

8 Q. Did it seem the same? Did it look like somebody had been
9 down?

10 A. Yeah, it looked like somebody's been down there and
11 looking at it and -- if you had pictures, I could explain it
12 better.

13 Q. And let me just ask you this, Mr. Whiteplume, and I'll
14 show you some pictures. Why do you think somebody had been
15 down there? Did it look cleaned up?

16 A. When I came back, by the time I got out of jail and I came
17 back, it smelled clean. I went down there and it smelled like
18 Clorox. It smelled clean.

19 Q. Did it smell like bleach?

20 A. It smelled like bleach.

21 Q. Did you ever go down into the crawl space again?

22 A. Yes.

23 Q. Tell us about that.

24 A. I just went in there, was looking at it, figuring out how
25 I was going to get rid of it.

1 Q. So walk me -- so do you recall when you went back into the
2 crawl space?

3 A. No. I'm still drinking whatever I can get my hands on.
4 To other people, explaining a week might seem like a long time
5 to you. When you was drinking, I was drinking, whatever it
6 was, it was hard stuff. I was drinking to forget.
7 Sometimes -- I don't know if -- you guys probably go on
8 vacations. You guys drink. Your week vacation seems like two
9 or three days. That's what this whole week felt like to me.

10 Q. Did you end up going back in that crawl space with
11 Chucky's body?

12 A. From what time?

13 Q. Anytime after you and Monty and Jori had put the body in
14 there, did you go back into the crawl space?

15 A. Yes.

16 Q. And who did you go with?

17 A. I went with Isaac Sitting Eagle and Arapaho.

18 Q. Why did you do that?

19 A. I thought we were going to go move the body.

20 Q. Did you?

21 A. No.

22 Q. Mr. Whiteplume, I'm going to show you or have you look at
23 the screen in front of you at what's marked as Government's
24 Exhibit 7-1. Are you familiar with that?

25 A. Yes, sir.

1 Q. And is that a photograph of -- is that a photograph that
2 you're looking at?

3 A. Yes. It's an ID badge.

4 Q. Is that true and accurate? Is that what it looked like?

5 A. Yes.

6 MR. CONDER: Your Honor, at this time the United
7 States would move to admit 7-1 and publish it.

8 MS. HUCKE: No objection.

9 THE COURT: Exhibit 7-1 will be admitted and
10 published.

11 (Government's Exhibit 7-1 received.)

12 Q. (BY MR. CONDER) Mr. Whiteplume, where was that? Do you
13 know where --

14 A. That's on the wood table. That's on the table.

15 Q. That's on the table in the basement?

16 A. Yes.

17 Q. Next I would show you what's marked as Exhibit 7-2. In
18 looking at that photograph, does it look familiar?

19 A. Yes.

20 Q. And what is that?

21 A. It's a photograph you showed me before, but I don't -- it
22 looks like a sock and a sweater. I can't say for sure if
23 that's -- if that's what he was wearing. I can't say that for
24 sure.

25 MR. CONDER: Okay. Your Honor, the United States

1 would move to admit Government's Exhibit 7-2.

2 MS. HUCKE: No objection, Your Honor.

3 THE COURT: All right. Exhibit 7-2 will be admitted
4 and may be published.

5 (Government's Exhibit 7-2 received.)

6 Q. (BY MR. CONDER) Mr. Whiteplume, is that a sock in the
7 photograph? Is that what it looks like?

8 A. It looks like it.

9 Q. And does that look like it could have been one of the
10 socks that you or Monty or Jori wore on your hands?

11 A. It could have been.

12 Q. Next I would direct your attention and publish to the jury
13 Government's Exhibit 4-2.

14 THE COURT: 4-2 is being published to the ladies and
15 gentlemen of the jury.

16 Q. (BY MR. CONDER) Mr. Whiteplume, you said that during --
17 when all of this was going on in the basement, Mr. Oldman told
18 you to put up a blanket; is that true?

19 A. That's true.

20 Q. And where did you put up the blanket? What did you put it
21 up over?

22 A. The bottom left window.

23 Q. So that window on the bottom left side, you put a blanket
24 over that window on the inside?

25 A. Yes, sir.

1 Q. And is that what Mr. Oldman told you to do?

2 A. Yes, sir.

3 Q. I would ask you to look at Government's Exhibit 4-3. Now
4 I would go to 4-5. Sorry. What is that a picture of?

5 A. It's the front door.

6 Q. Of your house at 331?

7 A. That's my grandma's house, 331 Great Plains.

8 Q. Is that the door you checked twice?

9 A. That's the door I checked twice.

10 Q. And how does that door lock? How does that door stay
11 shut?

12 A. It don't. It don't lock.

13 Q. There's a rope or a string that looks like it's hanging on
14 that -- the railing. What's that for?

15 A. That's what you use to close the door.

16 Q. So when you close the door, you tie it up with that
17 string?

18 A. Yes.

19 Q. Okay. And when you said you turned out the light, is that
20 light above "331," those numbers there, is that the light you
21 turned out?

22 A. Yes.

23 Q. I would now direct your attention to Government's Exhibit
24 4-23. What's this a picture of?

25 A. That's a picture of the white couch.

1 Q. And is that -- the nightstand over in the corner, your bed
2 used to be there?

3 A. Yes, sir.

4 Q. When did you take your bed out?

5 A. A couple days after that.

6 Q. Who helped you take your bed out?

7 A. Monty and my sister.

8 Q. And when you described coming down to the table and seeing
9 Mr. Oldman with the belt around Chucky's neck the first time,
10 is that the chair you were talking about?

11 A. That's the chair I was talking about.

12 Q. I would now show you what's marked as Government's Exhibit
13 4-20. Do you recognize that photograph?

14 A. Yes.

15 Q. And what is that?

16 A. That's by the dryer. When I was telling you -- it's a
17 little bit more over, but that's -- that's where Chucky was at
18 the third time I came down.

19 Q. I'll next show you what's marked as Government's Exhibit
20 4-30. What's that a photograph of?

21 A. That's where -- that's where he got killed. That's where
22 he was getting beat up by the -- by the second time when I
23 came down, right there. That -- that quilt wasn't there,
24 though.

25 Q. So in that corner over there, is that where Mr. Oldman cut

1 Chucky's throat?

2 A. Yes, sir.

3 Q. And that blanket covering that window, did you put that
4 blanket over the window?

5 A. Yes, sir.

6 Q. I'll show you what's marked as Government's Exhibit 4-42.
7 Do you recognize that photo?

8 A. Yes, sir.

9 Q. And what is that?

10 A. That red box, that's where -- that's where I got him in
11 the first time. That's where he was -- I was trying to get
12 him earlier so he would stay out of sight, out of mind.

13 Q. And let me show you what's marked as Government's Exhibit
14 4-45. Is that that red box?

15 A. That's that red box, yes, sir.

16 Q. And what's the significance -- what's happened there? Did
17 anything happen there?

18 A. That's where I got him in. And that's where I told him to
19 just lay there, be out of sight, out of mind. That's when I
20 gave him that blanket and I told him I'd get him to the
21 hospital in the morning.

22 Q. And I'll show you Government's Exhibit 4-47. Do you
23 recognize that photograph?

24 A. That's the blanket I gave him.

25 Q. That's the blanket you gave Chucky when you helped him

1 into the crawl space?

2 A. Yes, sir.

3 Q. Mr. Whiteplume, do you remember -- do you remember when
4 you asked Monty to help you get Chucky's body in the crawl
5 space?

6 A. When it started stinking.

7 Q. Do you remember, did you tell Monty to cut off his head --

8 A. No.

9 Q. -- or do you remember?

10 A. I never told him that.

11 Q. Did you give Monty a knife and tell him to help dismember
12 the body so it could be moved?

13 A. No. I never told him that.

14 Q. What did you tell Monty when you had him help you?

15 A. I had him help me just move it. A lot of -- a lot of the
16 stuff that Chucky sustained, I didn't -- I didn't know about
17 those wounds until I came to jail. I didn't know that he had
18 broken arms and broken ligaments until I came to jail.

19 Q. Let me -- do you recall what you told Monty? Did you tell
20 Monty to do anything to the body except help you get it in the
21 crawl space?

22 A. No. Just help me get it in the crawl space.

23 Q. Did you cut Chucky's body once he was dead?

24 A. No, I never cut Chucky's body once he was dead.

25 MR. CONDER: May I have a moment, Your Honor?

1 THE COURT: You may.

2 (Discussion off the record.)

3 Q. (BY MR. CONDER) Mr. Whiteplume, you said when your Uncle
4 Edd or -- that your Uncle Edd came down and woke you up. Do
5 you recall that?

6 A. Yes.

7 Q. And what was it that he said to you when he woke you up?

8 A. "You got to go."

9 Q. Did he say something before that?

10 A. He said, "He's gone."

11 MS. HUCKE: Objection, Your Honor. Hearsay.

12 THE COURT: Well, I'll sustain and strike the answer
13 as to what -- unless there's an exception as to what his uncle
14 said.

15 Q. (BY MR. CONDER) While you were down -- you talked about
16 Mr. Oldman pulling out a knife the first time. What did
17 Chucky -- did Chucky say anything when that happened?

18 A. The first time? I don't recall.

19 Q. At any time down in that basement, from the time this
20 started until the time Chucky was dead, what did Chucky ask of
21 you? What did Chucky ask of Mr. Oldman?

22 A. He wanted Mr. Oldman to stop beating him up. He wanted me
23 to stop him.

24 Q. Did he ask if he could leave?

25 A. I don't remember him asking if he could leave. He was

1 just asking for Mr. Oldman to stop punching him. That's the
2 first time I seen the knife; right? That's what you're
3 talking about?

4 Q. Anytime in the basement.

5 A. Anytime in the basement? He's asking Arapaho, "Just let
6 me go," you know, "I promise I won't tell," you know, asking
7 him to stop beating him up. He told me that it wasn't him
8 that jumped me, told me it was two youngsters. The whole time
9 he was talking while I was trying to see who it was.

10 Q. Now, Mr. Whiteplume, when your uncle woke you up that
11 morning, was Chucky's body still in the basement?

12 A. Yes, sir.

13 Q. Did your uncle see Chucky's body?

14 A. Yes, sir.

15 MR. CONDER: One moment, Your Honor.

16 THE COURT: All right.

17 (Discussion off the record.)

18 MR. CONDER: No further questions, Your Honor.

19 THE COURT: All right. Ladies and gentlemen, let's
20 go ahead and take a ten-minute recess, and I will try to be
21 good on my clock. I'll remind you of the recess instruction.
22 We'll be back in ten minutes.

23 Please rise.

24 (The jury exited the courtroom at 3:27 p.m.)

25 (The following took place outside the presence of the

1 jury.)

2 THE COURT: Anything we need to address before we
3 return for cross-exam? Mr. Conder?

4 MR. CONDER: Nothing for the United States, Your
5 Honor.

6 THE COURT: Ms. Hucke?

7 MS. HUCKE: No, Your Honor.

8 THE COURT: We'll be back in ten.

9 (At 3:28 p.m., a recess was taken until 3:43 p.m.)

10 (The following took place outside the presence of the
11 jury.)

12 THE COURT: Thank you. I note the presence of
13 counsel, presence of the defendant, absence of the ladies and
14 gentlemen of the jury.

15 All right. Any matters we need to address?
16 Mr. Conder?

17 MR. CONDER: I apologize, Your Honor.

18 THE COURT: Any matters?

19 MR. CONDER: No, Your Honor. Sorry.

20 THE COURT: Ms. Hucke?

21 MS. HUCKE: No, Your Honor. Thank you.

22 THE COURT: Let's go ahead then and bring in the
23 ladies and gentlemen of the jury.

24 (The jury entered the courtroom at 3:44 p.m.)

25 THE COURT: Thank you. Please be seated.

1 I'll remind the witness you're still under oath.

2 Ms. Huckle.

3 CROSS-EXAMINATION

4 BY MS. HUCKE:

5 Q. Mr. Whiteplume, you've met with the Government to talk to
6 them about what happened several times; correct?

7 THE COURT: Go ahead and answer.

8 A. Yes, ma'am.

9 Q. (BY MS. HUCKE) So you talked to them on December 1, 2017;
10 correct?

11 A. Yes, ma'am.

12 Q. You talked to them again on December 7, 2017?

13 A. I couldn't recall that one.

14 Q. There was a time where the FBI was coming to the house to
15 look in the basement again and you and your sister were there?

16 A. You're talking in 2017?

17 Q. Correct.

18 A. Oh, yes, ma'am.

19 Q. And then you talked to them on December 12, 2018; is that
20 correct?

21 A. Yes, ma'am.

22 Q. And then a couple weeks ago, on December 27, 2018?

23 A. I don't recall that one.

24 Q. When you met at the U.S. Attorney's office.

25 A. (No response.)

1 Q. You don't recall meeting at the U.S. Attorney's office
2 with your attorney and the Government?

3 A. Of this year?

4 Q. 2018.

5 A. Okay. I guess not.

6 Q. And then again you came into this courtroom last Friday,
7 and you changed your plea to guilty; correct?

8 A. Yes, ma'am.

9 Q. And you told the judge your story again?

10 THE COURT: Go ahead and answer.

11 A. Yes, ma'am.

12 Q. (BY MS. HUCKE) So every time you tell this story, it's
13 different; correct?

14 A. No, ma'am. Not from the -- not from my point of view, but
15 from the way the questions are asked.

16 Q. So let's talk about December 1, 2017, when you talked to
17 the FBI. You were sitting in their car. Do you recall that?

18 A. December when?

19 Q. December 1, 2017.

20 A. Yes, ma'am.

21 Q. And then you told them that the only thing you knew was
22 that Arapaho just told you he'd put in some work; is that
23 correct?

24 A. Yes, ma'am.

25 Q. And then you told them Arapaho was the one telling

1 everyone about the body and that you never saw a body?

2 A. Yes, ma'am.

3 Q. So again, next you said that you never saw a body down in
4 the basement and that you only knew about it because your Aunt
5 Angela told you?

6 A. Yes, ma'am.

7 Q. The FBI asked you if Arapaho had you help him clean up the
8 body, and you told them no?

9 A. No.

10 Q. So you did not tell them that you didn't help clean up the
11 body on December 1?

12 A. Can you be more vague by what you mean by cleaned up?
13 Like wash him, move him, put clothes on him?

14 Q. You told the FBI that you had never seen the body at that
15 time?

16 A. But you still never asked me about the cleanup, the body.
17 What are you getting at about that?

18 Q. You told the FBI on December 1 that you did not help clean
19 up the basement or the body; is that correct?

20 A. That's correct.

21 Q. And so that's different than what you said here today.

22 THE COURT: Go ahead and answer.

23 A. Yes.

24 Q. (BY MS. HUCKE) And so you lied on -- in December because
25 you had in fact saw the body?

1 A. Yes.

2 Q. Now let's talk about when you met -- talked to the FBI on
3 December 7, 2017. This is when they came to your house to get
4 more things out of the basement. Do you recall that time?

5 A. Yes.

6 Q. And on that day you told them you had no idea what
7 happened down there, and the only thing that you know is
8 Arapaho told you he did it; correct?

9 A. Say that again.

10 Q. You told the FBI that you had no idea what happened down
11 in the basement, and the only thing that you know is Arapaho
12 told you that he did it.

13 A. No, I didn't tell them that. I told them I heard Arapaho
14 did it.

15 Q. Okay. You didn't tell them you had no idea what happened?

16 A. Yes, that part.

17 Q. I'm sorry. What was your answer?

18 A. I said yes, that part.

19 Q. You did tell them that?

20 A. I did tell them that.

21 Q. And you told the FBI on that day that you weren't going to
22 lie to them; is that correct?

23 A. I don't remember that part.

24 Q. You don't remember telling them that you weren't going to
25 lie to them?

1 A. On what day is this?

2 Q. On December 7.

3 A. This is when they walked up through the front --

4 Q. Uh-huh.

5 A. -- walked in to get more things? They didn't ask me those
6 questions like that.

7 MS. HUCKE: Can you pull up Exhibit 476.

8 And, Your Honor, I guess before we do play it, this
9 is an audio clip from that interview, and I have the
10 transcript here I can show Mr. Conder.

11 THE COURT: Any objections to the playing of that
12 audio?

13 MR. CONDER: No, Your Honor. If it -- if it is what
14 I think it is, I think it's fine.

15 THE COURT: All right. I'll allow it to be played.

16 MS. HUCKE: It's 476.

17 (Playing recording.)

18 Q. (BY MS. HUCKE) Mr. Whiteplume, is that your voice in that
19 recording?

20 A. That sounds highly intoxicated.

21 Q. Is that your voice?

22 A. They're not allowed to take a statement from --

23 Q. Can you answer my question, sir?

24 THE COURT: Listen to her question, sir.

25 Go ahead.

1 Q. (BY MS. HUCKE) Is that your voice in that recording?

2 A. Yes.

3 Q. And so now do you recall telling the FBI that you weren't
4 going to lie to them?

5 A. No. I was highly intoxicated in that situation.

6 Q. Answer my question. Did you tell the FBI you weren't
7 going to lie to them?

8 A. Yes. That's my voice.

9 Q. And you told them that you didn't know anything about what
10 happened?

11 A. You're talking to an intoxicated --

12 Q. Mr. Whiteplume, answer my question. You told them on that
13 day that you didn't know what happened; correct?

14 A. I didn't even know I had that conversation that day.

15 Q. Can you answer my question?

16 A. If that's my voice, yes, that's my voice. I don't even
17 recall that conversation.

18 Q. Okay. Do you recall talking to the FBI on December 12,
19 2017?

20 A. Can you play that recording too?

21 Q. I'm going to ask you questions about it. Okay?

22 A. I got -- I got to be able to remember these.

23 Q. Okay.

24 A. Because that one, that last one I obviously don't
25 remember. I don't remember talking. That's why when I get

1 certain dates, I don't remember.

2 Q. But you said earlier you remember you've talked to the FBI
3 several times throughout the last year?

4 A. Yeah, several times.

5 Q. And on December 12 you finally then admitted that you were
6 there that night and you knew what happened; correct?

7 THE COURT: Counsel, just so the reference is --
8 December 12th of 2018 or --

9 MS. HUCKE: 2017, Your Honor.

10 THE COURT: Go ahead and answer the question.

11 A. What's the question?

12 Q. (BY MS. HUCKE) The question was, you, on December 12,
13 2017, admitted to the FBI that you knew what happened that
14 night; correct?

15 THE COURT: Did you say 2018 or '17?

16 MS. AMRAM: I meant 2017.

17 THE COURT: Now we're square. Go ahead.

18 A. We got a recording of this conversation too?

19 Q. (BY MS. HUCKE) Sir, can you just answer my question?

20 A. I got to be able to know if I remember these
21 conversations.

22 Q. I'm asking you, then, did you -- was there a point in time
23 where you told the FBI that you did know what happened that
24 night?

25 A. Is this when I went and took the polygraph?

1 Q. I'm just asking about a time that you talked to the FBI.

2 A. I was highly intoxicated for the whole month.

3 Q. Okay. But you have changed your story. Initially you
4 told them you had no idea what was going on, what happened.

5 A. They're obviously talking to me when I'm drunk.

6 Q. Okay. And now we know that that's not true.

7 A. I'm not drunk now.

8 Q. You do know what happened that night; correct?

9 A. Yes. I do know what happened that night.

10 Q. So there was a point in time where you then came and you
11 told the FBI that you did know what happened to Chucky that
12 night?

13 A. Yes.

14 Q. And when you first told them that, you told them that
15 Arapaho just flipped out and started beating Chucky, and you
16 had nothing to do with it; correct?

17 A. Can you play the audio?

18 Q. You need to answer my question.

19 THE COURT: If you can't remember, you can't
20 remember. But to the extent you can answer her question, you
21 need to answer her question.

22 THE WITNESS: I -- I don't know the conversation that
23 she --

24 THE COURT: All right. Just a minute.

25 Ladies and gentlemen, I'm going to excuse you for a

1 minute. We'll be right back.

2 (The jury exited the courtroom at 3:57 p.m.)

3 (The following took place outside the presence of the
4 jury.)

5 THE COURT: Have a seat.

6 Mr. Whiteplume, to the extent they may have a
7 recording or may not, it doesn't matter. You'll need to
8 answer the question. If you don't recall, if you don't know,
9 you don't know. But whether or not they have a recording, it
10 may eventually be played, but you have to answer, based upon
11 your recollection, the questions asked.

12 Here's the other thing. I don't want you to make any
13 reference to any polygraph or any prior evaluation or
14 submission that you've made in terms of any polygraph.

15 THE WITNESS: Yes, sir.

16 THE COURT: What's your question? Go ahead and speak
17 into the microphone.

18 THE WITNESS: Yes, sir. If I don't know, I can't --
19 do I have to say no or yes, sir? It's not -- it's not I'm
20 saying no; I'm not saying yes. It's that I don't know.

21 THE COURT: Well --

22 THE WITNESS: I mean, that's not a yes or no
23 question. That's not a yes or no response if I don't know.

24 Can I say something else?

25 THE COURT: If you don't know, you don't know. You

1 don't recall. You don't know, you don't recall, whatever the
2 correct and honest answer is is the answer. So that's all
3 that I want you to respond, is you know or don't know. If you
4 don't recall, you don't recall. Whatever it is, it is.

5 THE WITNESS: Yes, sir.

6 THE COURT: Anything further, Ms. Huckle?

7 MS. HUCKE: Your Honor, I would say that since he had
8 mentioned the polygraph report, I think we should be able to
9 get in at this point --

10 THE COURT: Hold on.

11 MS. HUCKE: -- that he did take a polygraph and he
12 did fail the polygraph on that day.

13 THE COURT: You can move tonight whatever you want to
14 do, but I'm not -- because there's all kinds of polygraphs
15 around here, and I'm not getting into any polygraphs and
16 opening that door. I did not say anything. I didn't strike
17 it. I didn't put any alarm bells on it. I'll give a limiting
18 instruction if you want, but we're not going down the
19 polygraph trail. Unless there's some law you have to support
20 it, we're not going there. We're going testimony and
21 evaluation by this jury as to who's credible and who's not.

22 Anything further?

23 MR. CONDER: Your Honor, I would only note for the
24 record that Mr. Whiteplume's attorney, Mr. Craig Silva, is
25 present. Not that anything needs to be done; I would just put

1 it on the record.

2 THE COURT: All right. Mr. Whiteplume, you
3 understand? You need to answer the question. Whatever the
4 answer is, it is. If you know, you know. If you don't, you
5 don't. You just need to answer honestly and truthfully. And
6 I don't want you to make any reference to any prior polygraph
7 that's been taken or any discussions regarding it. All right?

8 THE WITNESS: Yes, sir.

9 THE COURT: Anything else we need to cover before we
10 bring in the ladies and gentlemen of the jury?

11 MR. CONDER: Nothing for the Government, Your Honor.

12 MS. HUCKE: I'm sorry, Your Honor.

13 THE COURT: Anything else we need to address before
14 we bring in the jury?

15 MS. HUCKE: No.

16 THE COURT: All right. Please rise.

17 (The jury entered the courtroom at 4:01 p.m.)

18 THE COURT: Thank you. Please be seated. I'm sorry,
19 ladies and gentlemen.

20 Ms. Hucke.

21 Q. (BY MS. HUCKE) Mr. Whiteplume, when you met with the FBI
22 on December 12th of last year, 2017, do you recall telling
23 them at that point then you did see what happened to Chucky?

24 A. I don't recall.

25 Q. Do you recall telling them that you only hit him a couple

1 of times because you were afraid of Arapaho?

2 A. I don't recall.

3 Q. Okay. Do you remember meeting with the FBI and the
4 Government in December of this year?

5 A. Yes.

6 Q. And at that time you told them that you decided this was
7 the time you were finally going to tell them the truth?

8 A. I don't -- I don't remember that part.

9 Q. Do you recall the story that you told them this year in
10 December was different than what you told them last year? Is
11 that correct?

12 A. That's correct.

13 Q. Because now you've included more people that were at the
14 house; is that correct?

15 A. That's correct.

16 Q. You told them that your sister, Jori, was there?

17 A. I didn't tell them that.

18 Q. You don't recall telling the Government that your sister,
19 Jori, was there this year, that she was there that night?

20 A. I don't recall that conversation, that part of the
21 conversation.

22 MS. HUCKE: Can you play Exhibit 489.

23 THE COURT: And, Counsel, before we play this, just
24 so that it's clear, can you go ahead and put on the record
25 what it is.

1 MS. HUCKE: Yes, Your Honor. This is a recording
2 from an interview at the U.S. Attorney's office on December
3 27th of this year.

4 THE COURT: All right. Go ahead.

5 (Counsel confer.)

6 THE COURT: Any objections, Counsel?

7 MR. CONDER: No, Your Honor.

8 THE COURT: Go ahead.

9 (Playing recording.)

10 THE COURT: Let's pause for one moment and we'll
11 replay it. Can you turn up the volume on your computer.

12 MS. DOMINGUEZ: That's as high as it goes.

13 MS. HUCKE: Your Honor, I will let the Court know
14 this is a really muffled recording. We've had hard times with
15 that as well, and I think that's as high as it goes.

16 THE COURTROOM DEPUTY: I've got it maxed too.

17 THE COURT: Let's be very quiet, then, and we'll
18 listen to it.

19 (Playing recording.)

20 Q. (BY MS. HUCKE) Mr. Whiteplume, is that your voice?

21 A. Yes.

22 Q. And could you hear you saying that your sister was at the
23 house?

24 A. Yes.

25 Q. And you also stated that Monty was there?

1 A. Yes.

2 Q. And you stated that Bernadette Brown was there but that
3 you previously knew her by a different name?

4 A. Yes.

5 Q. So you stated on December 27 and today in court that
6 Mr. Oldman had a belt around Chucky's neck; is that correct?

7 A. That's correct.

8 Q. But you had never mentioned a belt to the Government
9 before those dates?

10 A. I told them about the belt.

11 Q. So you told them about the belt just in the last couple
12 weeks?

13 A. (No audible answer.)

14 THE COURT: You need to audibly answer. I'm sorry.
15 Was that a yes or a no?

16 THE WITNESS: It's one of those tricky questions.

17 THE COURT: Go ahead and restate it, Counsel.

18 Q. (BY MS. HUCKE) So you told the Government about the belt
19 within the last couple weeks; is that correct?

20 A. I told them about the belt before too.

21 Q. Okay. So you're saying that you told them about the belt
22 before December 27, 2018?

23 A. I keep telling them about the belt.

24 Q. So let's talk about the belt. Was this a leather belt?

25 A. I just told them all I seen was a brown belt.

1 Q. I'm sorry. A round belt?

2 A. A brown belt.

3 Q. A brown belt. And you're saying that you didn't see the
4 belt be placed on Chucky's neck? You just came down and the
5 belt was already on his neck?

6 A. That's correct.

7 Q. And other people were in the basement when the belt was
8 around his neck?

9 A. Are you asking me to speak from other people's point of
10 view?

11 Q. No. I'm asking you if other people were also in the
12 basement when the belt was around Chucky's neck.

13 A. When I came down and seen them, yeah, he had a belt around
14 his neck.

15 Q. And my question was, were other people also in the
16 basement?

17 A. Yes.

18 Q. Specifically, was Bernadette in the basement at that time?

19 A. Yes.

20 Q. And so she would have been able to clearly see the belt
21 around Chucky's neck?

22 A. I can't speak from her point of view. You're asking me to
23 speak from other people's point of view.

24 Q. But it was pretty obvious that there was a belt around his
25 neck; correct?

1 A. I noticed it.

2 Q. And so you previously testified that you became angry when
3 you thought Chucky was one of the people that had jumped you
4 prior; is that correct?

5 A. That's correct.

6 Q. So let's talk about when you were jumped. So this was
7 just a couple weeks prior to Thanksgiving of last year;
8 correct?

9 A. When I got jumped?

10 Q. Uh-huh.

11 A. That was, I think -- I got jumped twice that year.

12 Q. Okay. So you got jumped twice that year. But you --

13 THE COURT: Twice that year or day?

14 THE WITNESS: That year.

15 THE COURT: Go ahead.

16 Q. (BY MS. HUCKE) But you were placed in the hospital the
17 time that you were jumped that was closer to Thanksgiving of
18 last year; correct?

19 A. I was in the hospital twice.

20 Q. Okay. So you were in the hospital when you were jumped
21 the time that was close to Thanksgiving?

22 A. I was -- I was jumped twice.

23 Q. Okay. And so then you were in the hospital twice?

24 A. More than twice that year.

25 Q. And do you recall speaking to the police about that

1 incident?

2 A. Which one?

3 Q. So you spoke to the police -- I'm talking about the time
4 that was closest to Thanksgiving. Okay? I know there was one
5 time maybe in the summer that you were jumped.

6 A. You got the hospital records or --

7 Q. There was a -- you just need to answer my question. There
8 was a time -- I know you're saying you got jumped twice last
9 year; correct?

10 A. That's correct.

11 Q. And you were mad at Chucky because you thought he was one
12 of the people who jumped you?

13 A. Yes, I was mad.

14 Q. Okay. And so the time that you thought Chucky was
15 involved was just a couple weeks before Thanksgiving last
16 year; correct?

17 A. I was asking about both times. All I heard was, "This is
18 one of the people that jumped you." I wasn't clear on what
19 time or any time. He didn't make that specific. I was mad.

20 Q. Okay. So you were mad because you thought he had
21 previously jumped you; correct?

22 A. Yes.

23 Q. And you had been jumped just a couple weeks before this
24 all happened; correct?

25 A. Like I said, I'd been jumped twice that year.

1 Q. Okay. And the time before -- the couple weeks before
2 Thanksgiving, you spoke to the police about what happened?

3 A. Do you know which police station?

4 Q. I'm sorry. What?

5 A. Do you know which police it was?

6 Q. I'm talking about the time that was a couple weeks before
7 Thanksgiving.

8 A. A couple weeks before Thanksgiving I was also hospitalized
9 for spider bites.

10 MS. HUCKE: Okay. So give me a moment, Your Honor.

11 THE COURT: All right.

12 Q. (BY MS. HUCKE) Mr. Whiteplume, I'm going to show you
13 something, and I'd like for you to look at it on the screen
14 and read it to yourself.

15 MS. HUCKE: Can you bring up Exhibit 462.

16 THE COURT: The witness is being shown Exhibit 462
17 only and counsel. Go ahead.

18 Q. (BY MS. HUCKE) And let us know when you're ready for us
19 to show you the next page.

20 A. Yes, I'm ready.

21 Q. Okay. So does that help clarify the time we're talking
22 about when you were jumped?

23 A. That's --

24 (Reporter interruption.)

25 MS. HUCKE: Can you show him the next page.

1 Q. (BY MS. HUCKE) So does that help clarify the time that
2 I'm asking you about?

3 A. Yes. That clarifies it a little bit more.

4 Q. And on the second page -- if you want to go back to the
5 second page -- there is actually a typo in the last page. It
6 says October 2, but that was actually on November 2.

7 MR. CONDER: Your Honor, I guess I would object. I
8 don't know how we know that.

9 THE COURT: Well, I'll sustain the objection. But
10 you can point him to other places. Maybe the page that's up
11 on the screen now.

12 Q. (BY MS. HUCKE) I'm just trying to clarify I know you've
13 been jumped a few times. I'm just trying to clarify that I'm
14 talking about this specific time. Does that help refresh your
15 memory?

16 A. It was really dark when I got jumped that time. It says
17 4:22.

18 Q. Okay. So you got -- this is the time that we're talking
19 about that you got jumped. It was just a couple weeks before
20 Thanksgiving last year.

21 A. So we're talking about the incident now; right?

22 Q. Correct. And do you recall -- you talked to the police
23 about that?

24 A. Can I read that second page again?

25 Q. Sure.

1 A. This is from the Riverton Police Department?

2 Q. That's correct.

3 A. Did they get my BAC?

4 THE COURT: Mr. Whiteplume, you'll need to answer her
5 question based upon the information contained in here.

6 THE WITNESS: I'm sorry, sir.

7 THE COURT: Go ahead.

8 Q. (BY MS. HUCKE) So my question was, you spoke to the
9 police about this incident; correct?

10 A. Yes.

11 Q. And at that time you told them that you wanted to handle
12 the situation yourself; correct?

13 A. Yes.

14 MS. HUCKE: Okay. Thank you. We can take it down,
15 Your Honor.

16 THE COURT: All right.

17 Q. (BY MS. HUCKE) And so you were upset about what happened
18 to you that day?

19 A. Yes, I was upset.

20 Q. And you thought Chucky was one of the people who were
21 involved in that?

22 A. Yes, I thought he was one of the people.

23 Q. And so you were angry when you thought that?

24 A. When I thought that, I was angry.

25 Q. And so not only when you found out, but you were

1 punching -- you were punching Chucky in the face; correct?

2 A. Correct.

3 Q. And you said you were kicking him?

4 A. More of a stomp.

5 Q. So you were stomping on him?

6 A. Correct.

7 Q. And when you were stomping on him, you were using all of
8 your body weight because you were mad?

9 A. I was stomping him.

10 Q. Okay. You were stomping him hard because you were mad?

11 A. I was stomping him. I was stomping him, like I said.

12 Q. So now I want to talk a little bit about your sister,
13 Jori. Her name's Jori Lamebull; is that correct?

14 A. That's correct.

15 Q. And you stated that she was there that night?

16 A. During the interview?

17 Q. Was your sister, Jori, there the night before Thanksgiving
18 2017?

19 A. That night? That same night? She could have been there
20 that night. She could have left too. I mean, it does get
21 dark around 5:30, 6:00. And you're talking about the whole
22 night, until the sun comes up; right?

23 Q. Do you recall that you got in a fight with your sister,
24 Jori, a couple days before Chucky was murdered?

25 A. No. I didn't recall that until people showed me.

1 Q. And during that fight you actually pulled a knife on her;
2 correct?

3 A. No. We were eating.

4 Q. And after the murder happened, you actually talked to her
5 about it; correct?

6 A. I remember -- I remember talking about bits and pieces.

7 Q. Okay. And so the day before, I believe it was your
8 grandma's memorial. That was on the 26th of November 2017?

9 A. I don't know. We are drinking quite a bit.

10 Q. So you previously testified that you remember that there
11 was a memorial dinner for your grandmother that year; correct?

12 A. Correct.

13 Q. And that that was on November 26, 2017?

14 A. Correct.

15 Q. And the day before that, on December -- excuse me,
16 November 26, the day before that. On November 25, 2017, you,
17 Jori, and Monty were all at 331 Great Plains; correct?

18 A. What time was this?

19 Q. I just asked that on that day, the 25th, the day before
20 your grandma's memorial, the three of you were at 331 Great
21 Plains; correct?

22 A. Yes. We were all three there.

23 Q. And Chucky's body was also in the basement on that day?

24 A. Yes.

25 Q. And you wanted to get rid of that body out of the

1 basement; correct?

2 A. Every time I came after, whenever came after, when I came
3 after him.

4 Q. So you wanted the body out of the basement?

5 A. On the day before?

6 Q. Correct.

7 A. On the day before, Arapaho still never came after the
8 body. It was starting to stink.

9 Q. Mr. Whiteplume --

10 A. It was starting to stink.

11 THE COURT: Go ahead and ask the question.

12 Answer the question, sir.

13 Q. (BY MS. HUCKE) On that day you wanted the body out of the
14 basement; correct?

15 A. Correct.

16 Q. And so you brought Monty downstairs to help you move the
17 body?

18 A. That's correct.

19 Q. And you actually handed him a box cutter, and you told him
20 that "We need to cut his head off to start dismembering his
21 body"; is that correct?

22 A. That's not correct.

23 Q. And that you actually ordered Monty to use the box cutter
24 to cut off Chucky's neck; correct?

25 A. I never did that.

1 Q. And you actually told him that you would give him \$200 to
2 cut off Chucky's head; correct?

3 A. I never did that.

4 Q. You told him that the Irish mob was coming from Colorado
5 to collect Chucky and that that's why you needed to cut him
6 up; is that correct?

7 A. Never did that.

8 Q. And during this time you got pretty angry; correct?

9 A. Why would I be angry?

10 Q. And you were actually hitting and punching and kicking
11 Chucky's dead body?

12 A. Nope.

13 Q. And you actually said to Monty, "I want to cut off his
14 penis and put it in his mouth, like the movie *Platoon*";
15 correct?

16 A. Never did that.

17 Q. And then you ordered Monty to check his pockets for money?

18 A. Never did that.

19 Q. So there was a point that you and Monty were downstairs in
20 the basement with Chucky's body, just the two of you with
21 Chucky's body; correct?

22 A. Correct.

23 Q. And you tried to both lift him up and get him in the crawl
24 space, but you weren't able to do it with just the two of you;
25 correct?

1 A. Correct.

2 Q. And so then you called your sister, Jori, down to help
3 you?

4 A. Yes.

5 Q. And when your sister saw the body, she actually got pretty
6 upset, didn't she?

7 A. Yeah. She didn't know about it until then.

8 Q. So she started yelling and screaming a little bit because
9 she got upset?

10 A. She got a little bit mad.

11 Q. I'm sorry. What was that?

12 A. Seemed like she got a little bit mad. I don't know if it
13 was actually screaming upset.

14 Q. So when she got loud, you actually went up to her and you
15 put your hand over her mouth and told her to be quiet?

16 A. No.

17 Q. And you told her, "Be quiet. Everything's going to be
18 okay"?

19 A. No.

20 Q. Then you ordered the two of them to help you put Chucky's
21 body into the crawl space?

22 A. I talked to them about helping me put it in the crawl
23 space.

24 Q. So and you Monty lifted up Chucky's body, and Jori held
25 open the door?

1 A. That's correct.

2 Q. And you ordered them to go around and collect anything
3 that that they could see that had blood on it down in the
4 basement?

5 A. That's correct.

6 Q. And you had them put it in trash bags so you could burn it
7 in the burn barrel?

8 A. That's correct.

9 Q. So you cleaned up the scene down there as best you could
10 with their help?

11 A. I just picked it up and burned stuff.

12 Q. So you cleaned up everything you saw down there that had
13 blood on it?

14 A. Whatever they picked up that fit into a trash bag.

15 Q. So on the night that this happened, you testified that
16 Mr. Oldman ordered you to put a blanket up over the window; is
17 that correct?

18 A. That's correct.

19 Q. I'm going to show you Government's Exhibit 4-32.

20 THE COURT: Could I have the Government's counsel put
21 up 4-32, please.

22 All right. This has been admitted, so I'll publish
23 it to the ladies and gentlemen of the jury. Go ahead.

24 Q. (BY MS. HUCKE) So you can see is this a clear picture of
25 the basement?

1 A. Yes, that's the basement.

2 Q. And the blanket that is hanging over the window, that's
3 the blanket that you were ordered to put up that night?

4 A. That's correct.

5 Q. And there's -- clearly, there's no curtain rod to hang a
6 blanket over; is that correct?

7 A. That's correct.

8 Q. And so this blanket was held up by nails; correct?

9 A. That's correct.

10 Q. So you're testifying that while Mr. Oldman was beating
11 Chucky, he ordered you to put up this blanket, and you nailed
12 it into the frame of the window; is that correct?

13 A. He didn't order me to nail it. Those nails were already
14 in there.

15 Q. So you had to put nails in to hang up the blanket?

16 A. I didn't have to put nails in. The nails were already
17 there.

18 Q. So, Mr. Whiteplume, let's talk about your plea agreement a
19 little bit. Okay?

20 MS. HUCKE: And I'd like that taken down. Thank you.

21 Q. (BY MS. HUCKE) So you came into this courtroom last
22 Friday and you pled guilty to aiding and abetting second
23 degree murder; correct?

24 A. That's correct.

25 Q. When you were initially charged -- you were charged here

1 in federal court?

2 A. I was initially charged with --

3 Q. You were charged in federal court?

4 A. When I was initially charged, I was charged in Lander,
5 Wyoming. I was charged with accessory after the fact.

6 Q. But then you were indicted on an aiding and abetting first
7 degree murder charge; correct?

8 A. In July.

9 Q. Okay. So you were indicted for aiding and abetting first
10 degree murder in July; correct?

11 A. That's correct.

12 Q. And you were aware that the sentence you were facing on
13 that charge was a mandatory life sentence; correct?

14 A. That's correct.

15 Q. And by changing your plea, the Government has agreed to
16 have -- agreed to have you plead to a lesser charge of second
17 degree murder; correct?

18 A. State that again.

19 Q. So as part of your plea agreement, the Government has
20 allowed you to plead guilty to aiding and abetting second
21 degree murder; correct?

22 A. That's correct.

23 Q. As opposed to first degree murder?

24 THE COURT: If you have an answer, answer. Go ahead
25 and answer the question.

1 THE WITNESS: That's like a --

2 THE COURT: Go ahead and restate the question.

3 MS. HUCKE: Okay. I can just strike the end part of
4 that question.

5 Q. (BY MS. HUCKE) And so now you're no longer facing a
6 mandatory life sentence, are you?

7 A. I'm still facing life.

8 Q. But you're not facing a mandatory life sentence?

9 A. I'm still facing life.

10 Q. When you were charged with aiding and abetting first
11 degree murder, you were facing mandatory life; correct?

12 A. I was charged with first degree and aiding and abetting
13 and accessory after the fact.

14 Q. But when you were charged with aiding and abetting first
15 degree murder, you were facing a mandatory life sentence,
16 which means that the judge wouldn't even be allowed to go any
17 less than that.

18 A. The mandatory -- that mandatory was because I was charged
19 with first degree murder and aiding and abetting and accessory
20 after the fact. So that -- that mandatory popped up when the
21 first -- when the first degree popped up.

22 Q. So your understanding is the mandatory part means that the
23 judge couldn't even give you less than a life sentence?

24 A. I was charged with all three. Accessory after the fact is
25 zero to 15. The first degree is a mandatory life.

1 Q. Right. And with mandatory life, your understanding is the
2 judge couldn't sentence you to anything less than life if you
3 were convicted of that charge?

4 A. If I was convicted of first degree murder.

5 Q. Correct.

6 A. If I was convicted of first degree murder, that means it's
7 mandatory. The accessory after the fact is still zero to 15.

8 Q. So you're getting a big benefit from your plea agreement,
9 because you're no longer facing mandatory -- a mandatory life
10 sentence; correct?

11 A. I'm still facing life.

12 Q. So life is the maximum that you could get under aiding and
13 abetting second degree murder?

14 A. That's correct.

15 Q. But the judge can sentence you to less than that?

16 A. It's up to life, yes.

17 Q. You can get less than that?

18 A. Yes.

19 Q. And you're aware that you have a guideline sentence that
20 could be somewhere between 22 years to 27 years potentially?

21 A. I've been seeing guidelines, but the way it's been
22 explained to me is this pops up, that pops up, this is here,
23 that's there. It's -- it's -- I still don't even understand
24 where it's going to pop up, where it's going to end at even
25 after the trial. I could still get life.

1 Q. Okay. But you also understand that as part of your plea
2 agreement and coming here and agreeing to testify today, that
3 the Government could recommend even less for your cooperation?

4 A. That's -- that's all legal stuff.

5 Q. But you understand that you could get a lesser sentence
6 from coming here today to testify?

7 THE WITNESS: Does that make --

8 THE COURT: Go ahead and -- do you understand her
9 question?

10 THE WITNESS: No. She's --

11 THE COURT: Go ahead and restate the question,
12 Ms. Huckle.

13 Q. (BY MS. HUCKE) So you understand that because you came in
14 here and testified and you're cooperating with the Government,
15 that the Government could ask for even less time when you get
16 sentenced?

17 A. There's no promises made.

18 Q. But that could happen?

19 A. My lawyer has to talk that up.

20 Q. So, Mr. Whiteplume, you stated earlier that you have
21 talked to people about this murder after it happened; correct?

22 THE COURT: Can you be specific, Counsel?

23 Q. (BY MS. HUCKE) Specifically, you've talked to Bernadette
24 Brown about what happened to Chucky that night; correct?

25 THE COURT: You need to answer as best you can.

1 A. I don't remember.

2 Q. (BY MS. HUCKE) And there was a time that you were at the
3 Center of Hope with Bernadette Brown where you both talked
4 about Chucky's murder?

5 A. Center of Hope, is that the VOA?

6 Q. It's through the VOA.

7 A. I don't remember.

8 MS. HUCKE: Can I just have a moment, Your Honor?

9 THE COURT: You may.

10 (Counsel confer.)

11 Q. (BY MS. HUCKE) Mr. Whiteplume, while you've been in the
12 jail, you've actually told people to pin it on Arapaho; is
13 that correct?

14 A. That's not correct.

15 Q. And going back to your change of plea hearing that you had
16 in here on Friday, you remember as part of that hearing you
17 have to tell the judge what happened; correct?

18 A. Say that again.

19 Q. When you came in here to plead guilty to the charge of
20 aiding and abetting second degree murder, you had to tell the
21 judge what happened; right?

22 A. That's correct.

23 Q. And at that hearing you told the judge that Jori and Monty
24 had nothing to do with anything that night; is that correct?

25 A. Are you talking about -- talking about physically?

1 Q. You said --

2 A. I kicked him and I punched him.

3 Q. I'm talking about Monty and Jori. When you came in here
4 and changed your plea --

5 A. I did not see them kick or punch him.

6 Q. You said they had nothing to do with anything that night?

7 A. Are -- you're talking about the beating; right?

8 Q. I'm talking --

9 A. That was --

10 THE COURT: Hold on. Let her finish and clarify.

11 Q. (BY MS. HUCKE) You said in your change of plea that Monty
12 and Jori had nothing to do with anything that night, the night
13 that Chucky was murdered.

14 A. So this is about the beating; right?

15 Q. Correct.

16 A. Me and Arapaho.

17 Q. Okay. But my question was, you told the Court Monty and
18 Jori had nothing to do --

19 A. That's what I stated --

20 Q. -- with the beating that night?

21 A. -- me and Arapaho. I punched him and kicked him. Arapaho
22 did what he did.

23 Q. And you testified earlier that Monty actually handed
24 Arapaho something that night; is that correct?

25 A. I just seen hands being switched, hands being made. Is

1 that while I was kicking him? Because that was my main focus.
2 Is that while I was punching? Because that's my main focus.
3 Like I said, I can't talk for other people through their eyes.
4 I can't -- I can talk through my eyes.

5 Q. Mr. Whiteplume, you said earlier that Monty -- you saw
6 Monty hand something to Arapaho that night?

7 A. I saw that out of the corner of my eyes. I seen hands
8 made.

9 Q. And you know that when you come into Court, that you say
10 things and that you're under oath to tell the truth; correct?

11 A. That's correct.

12 MS. HUCKE: Can I have a moment, Your Honor?

13 THE COURT: You may.

14 (Counsel confer.)

15 MS. HUCKE: We have no further questions, Your Honor.

16 THE COURT: All right. Redirect.

17 REDIRECT EXAMINATION

18 BY MR. CONDER:

19 Q. Mr. Whiteplume, when you spoke with the FBI on December 1,
20 2017, was that just you and the FBI agents?

21 A. There was three FBI agents.

22 Q. Why didn't you tell them that you were involved?

23 A. I didn't want to get in trouble.

24 Q. You didn't want to get in trouble. Were you trying to
25 protect yourself?

1 A. Yes.

2 Q. Is that a yes?

3 A. Yes.

4 Q. And on December 7th of 2017, when the FBI came to your
5 house and spoke to you and we heard that recording, again, was
6 that just you and the FBI?

7 A. That -- that recording when I was drunk?

8 Q. Okay and so were you drunk on that time you heard
9 yourself? Were you drunk when you were talking to them?

10 A. I was drunk, yeah. That don't sound like me right now.

11 Q. So the other times when you spoke to the FBI, in December
12 and January of 2018, why didn't you tell them the story you
13 told today?

14 A. Scared.

15 Q. What were you scared of?

16 A. (No response.)

17 Q. Were you scared of -- go ahead.

18 A. I was scared of getting in trouble, scared of him.

19 Q. You were scared of getting in trouble and scared of what
20 else?

21 A. Scared of him.

22 Q. And who's "him"?

23 A. Arapaho.

24 Q. Why were you scared of him?

25 A. Because I knew by then he -- there's a body in the ground.

1 He's not playing games.

2 Q. So backing up, why did you think Chucky was involved in
3 assaulting you earlier? Why did you think Chucky jumped you?

4 A. Because Arapaho told me.

5 Q. So until Mr. Oldman told you that, you never thought that,
6 did you?

7 A. No.

8 Q. We talked about that blanket on the window. Where'd you
9 get that blanket? Where'd it come from?

10 A. Just laying around in the basement.

11 Q. Just picked it up off the ground?

12 A. Yes, right there. It just -- there's a lot of stuff in
13 the basement. You seen pictures.

14 Q. You said you hung that blanket up before?

15 A. Yes, I did.

16 Q. So were those nails already in there?

17 A. Those nails were already in there.

18 Q. Did you ever hit Chucky with a weapon?

19 A. No.

20 Q. Did you cut his throat?

21 A. No.

22 Q. Did Jori Lamabull ever hit Chucky Dodge with a weapon?

23 A. No.

24 Q. Did Jori Lamabull cut Chucky Dodge's throat?

25 A. No.

1 Q. Monty Tabaho, did he hit Chucky Dodge with a weapon?

2 A. No.

3 Q. Did Monty Tabaho cut Chucky Dodge's throat?

4 A. No.

5 Q. At 331 Great Plains around Thanksgiving 2017, who did you
6 see hit Chucky Dodge with a weapon?

7 A. Arapaho.

8 Q. And who did you see cut Chucky Dodge's throat?

9 A. Arapaho.

10 MR. CONDER: May I have a moment, Your Honor?

11 THE COURT: You may.

12 (Discussion off the record.)

13 MR. CONDER: No further questions, Your Honor.

14 THE COURT: All right. May this witness be released
15 from any subpoenas? Ms. Huckle?

16 MS. HUCKE: Yes, Your Honor.

17 MR. CONDER: Yes, Your Honor.

18 THE COURT: You may step down.

19 The United States may call its next witness.

20 MR. CONDER: Your Honor, the United States would call
21 Bridget Oldman.

22 THE COURT: Bridget Oldman will come forward and be
23 sworn.

24 MR. CONDER: Your Honor, may we have a sidebar?

25 THE COURT: You may.

1 (At sidebar.)

2 MR. CONDER: Your Honor, the next witness is Bridget
3 Oldman. The next two witnesses after that are WinterHawk
4 Felter and Little Sun Felter. Those are her high school
5 student sons. Ms. Oldman has to be back in Fremont County
6 tomorrow for a medical procedure. Her sons are with her.
7 They're a package deal. I'd like to go tonight. I don't want
8 to, but I would ask the Court to do that. And I apologize.

9 THE COURT: We'll go. If it gets too late or
10 something comes up, then we'll change it. But I don't have
11 anything else scheduled.

12 MS. AMRAM: I don't expect it'll be a long
13 cross-examination.

14 MR. CONDER: And I don't think so either.

15 THE COURT: All right. Well, hopefully it won't be
16 as painful as the last one.

17 (End of sidebar.)

18 (The witness was sworn.)

19 THE COURT: All right. Somebody's got a cell phone
20 that has a ringer on. Turn it off or I'm going to put it in a
21 bucket of water. I don't care if it's an Apple 8 or not.

22 Oh, it's mine. It's my phone ringing in my chambers.
23 All right. I'll go put it in the water along with the budget
24 bill. All right. I apologize.

25 THE COURTROOM DEPUTY: Please state and spell your

1 name for the record.

2 THE WITNESS: Bridget Oldman. B-R-I-D-G-E-T, Oldman
3 O-L-D-M-A-N.

4 THE COURTROOM DEPUTY: Please state your occupation
5 and your city of residence.

6 THE WITNESS: I'm unemployed right now, so I just
7 take care of my grandbaby. I live in Arapahoe, Wyoming.

8 THE COURT: Counsel, before you begin, ladies and
9 gentlemen, we're going to go a little later with this witness
10 to get some witnesses off. Does anyone have any concerns with
11 doing that? Indicate otherwise. Do you have any other plans
12 or anything?

13 JUROR NUMBER 14: How much later?

14 THE COURT: Probably around 6:00.

15 JUROR NUMBER 14: (Nodding head.)

16 THE COURT: Okay. Go ahead.

17 MR. CONDER: Thank you, Your Honor.

18 BRIDGET OLDMAN, GOVERNMENT'S WITNESS

19 DIRECT EXAMINATION

20 BY MR. CONDER:

21 Q. Ms. Oldman, could you tell us a little bit about yourself?
22 Where do you live?

23 A. I live at -- in Arapahoe, Wyoming, at Ben Gay Heights
24 project.

25 Q. All right. And did you grow up on the Wind River Indian

1 Reservation?

2 A. Yes, on the --

3 Q. And are you a tribal member?

4 A. Yeah.

5 Q. What tribe?

6 A. Northern Arapaho.

7 Q. And do you have any children?

8 A. Yeah.

9 Q. How many kids do you have?

10 A. I have four boys.

11 Q. And how old are your boys?

12 A. 19, 18, 17, and 14.

13 Q. Do you know an individual by the name of Arapaho Oldman?

14 A. Yeah.

15 Q. And how do you know Mr. Oldman?

16 A. Through one of my adopted sisters. I knew of him growing
17 up, but we never really hung out until this last year or 2017.

18 Q. And your last name is Oldman. Are you guys related?

19 A. Yeah, like five -- fifth cousins. But I didn't really
20 know him.

21 Q. So you kind of met him in 2017?

22 A. Yeah, in July.

23 Q. And what's your relationship like with him? Are you guys
24 close?

25 A. I helped him get through Sundance as much as I could and

1 just started to get better relations, a better relationship
2 built with him, you know, help him out.

3 Q. And do you recognize Arapaho Oldman here in the courtroom
4 today?

5 A. Yeah.

6 Q. And could you tell us what he's wearing?

7 A. A turtleneck.

8 Q. Thank you.

9 MR. CONDER: I'm going to put up a calendar which is
10 marked as Government's Exhibit 1-2 on the screen, and I would
11 move to publish that. And it's already been admitted.

12 THE COURT: All right. I'm muting it because that
13 doesn't look right.

14 MS. DAWSON: That's not my computer.

15 THE COURT: And that's why. All right. Go ahead.

16 Q. (BY MR. CONDER) Ms. Oldman, that's just a calendar of
17 November 2017; is that correct?

18 A. Yeah.

19 Q. In looking at that calendar, I'm only giving that if you
20 need a hand. Do you recall what you did the day before
21 Thanksgiving 2017? That would be the 22nd of November.

22 A. Yeah. That evening, I do.

23 Q. And did you see Mr. Oldman that day?

24 A. Yeah.

25 Q. And what happened? What were you guys doing?

1 A. We were -- that day or that evening?

2 Q. Start out in the day and take us to the evening.

3 A. We were out looking -- supposed to be looking for jobs.

4 We were both unemployed. And my son was driving us.

5 Q. And which son would that be?

6 A. WinterHawk Felter.

7 Q. And so it was you and -- what kind of vehicle were you in?

8 A. We were in my brother's white double-cab truck.

9 Q. So a white truck?

10 A. Uh-huh.

11 Q. And that's what you were doing during the daytime? The
12 three of you driving around looking for jobs?

13 A. Yeah.

14 Q. What -- what happened? Did you guys all stay together?

15 A. Until that afternoon, evening, because I had to go home
16 and cook supper for the rest of my -- rest of my three boys.

17 Q. So what did you do with Mr. Oldman? Where'd you put him?

18 A. We took him to where he was staying at Charlotte's.

19 Q. And where's Charlotte's?

20 A. Down Eastman Road, past the dog pound.

21 Q. Is that in Riverton?

22 A. Yeah.

23 Q. So you dropped him off there?

24 A. Yeah.

25 Q. And then you and WinterHawk went home?

1 A. Yeah.

2 Q. And what did you do when you got home?

3 A. Cooked supper, ate supper, then decided to go to the
4 casino.

5 Q. So who did you go to the casino with?

6 A. At first, me and WinterHawk.

7 Q. And which casino did you go to? The big casino?

8 A. Yeah. We went to the big casino.

9 Q. And what were you and WinterHawk doing at the big casino?

10 A. We were playing, and my son was going to get something to
11 eat at the deli.

12 Q. Were you guys winning?

13 A. No.

14 Q. Who -- who drove you guys from the house to the big
15 casino?

16 A. WinterHawk.

17 Q. Still driving the white truck?

18 A. Yeah.

19 Q. Okay. So how was it that you came into contact with
20 Mr. Oldman again that night?

21 A. He -- he texted me.

22 Q. What did he text you?

23 A. That he didn't want to stay home and that he didn't want
24 to be home alone and that he had been sober. And I was trying
25 to keep him sober, and he didn't want to drink. So I went

1 ahead and went and got him.

2 Q. And did you go alone, or did WinterHawk --

3 A. No. WinterHawk had to drive me. I couldn't drive. I was
4 on crutches.

5 Q. You had crutches?

6 A. Uh-huh.

7 Q. So do you recall, was it dark time when you went to get
8 him?

9 A. Yeah.

10 Q. And where did you pick up Mr. Oldman?

11 A. At Charlotte's.

12 Q. Same place you dropped him off?

13 A. Yeah.

14 Q. Do you recall when you got there, was he waiting outside,
15 or did you have to tell him you were there? How'd he come
16 out?

17 A. I think he was already coming out, because I texted him
18 that I was almost there. And he came out.

19 Q. So did you -- what happened then? So you picked him up.
20 Where did you and Mr. Oldman and WinterHawk go?

21 A. We went straight back up to the big casino.

22 Q. What'd you guys do?

23 A. I went back in to go gamble.

24 Q. Did you talk to anybody? Did Mr. Oldman go with you?

25 A. Yeah. We all went in, but not too long after we arrived,

1 the security came and told him he couldn't be there.

2 Q. And told who he couldn't be there?

3 A. Told Arapaho that he couldn't be -- couldn't come in for a
4 few more days, because he was kicked out of the casino.

5 Q. So do you know where he went?

6 A. At first he was supposed to have gone to the deli with
7 WinterHawk, because they were going to let him wait until
8 WinterHawk got done eating, so he could leave, take him home.
9 But he wandered off and tried to gamble, and they took him --
10 escorted him out from there.

11 Q. So Mr. Oldman left the casino?

12 A. Yeah.

13 Q. Was there a time -- when did you next talk to him?

14 A. That morning, on the 23rd, Thanksgiving morning.

15 Q. And how was it that you talked to him?

16 A. By text.

17 Q. And let me back up. So once Mr. Oldman had left the
18 casino, did you and WinterHawk stay and gamble?

19 A. Yes.

20 Q. Did you and WinterHawk eventually go home?

21 A. Yeah. We left late.

22 Q. So you said Mr. Oldman contacted you early on the 23rd.
23 Do you recall how he -- how he contacted you?

24 A. He texted me.

25 Q. Do you recall what he said in the text?

1 A. That he forgot his bottle on my -- on my truck and that he
2 was starting to hang over. He wanted to come up and get it,
3 but it was like really, really cold that night, because I was
4 out looking for my nephew before that. But I remember it was
5 really freezing.

6 Q. So when he texted you and said he left the bottle on your
7 truck, does that mean he left the bottle inside your truck?

8 A. Yeah.

9 Q. And so once he texted you and told you that, what did you
10 do?

11 A. Kind of got after him first because he wasn't -- he knows
12 I don't like alcohol around my kids. And I didn't want him
13 walking all the way up from where -- from Great Plains to my
14 house. So I told him I'd bring it down to him.

15 Q. And how -- how did you take it down to him?

16 A. On my brother's white truck. I woke my son up. And he
17 had just laid down, but I got him up out of bed to take it
18 down to him.

19 Q. And which son of yours was that?

20 A. That was my second oldest, Little Sun.

21 Q. So you and Little Sun got in the white truck, and --

22 A. Yeah.

23 Q. -- where did you guys go?

24 A. We went to the Shakespeare residence.

25 Q. Is that in Great Plains housing?

1 A. Yeah.

2 Q. And is that 331 Great Plains?

3 A. I'm not sure.

4 Q. So when you got to this house in Great Plains, what
5 happened?

6 A. Arapaho came outside.

7 Q. And what did you notice?

8 A. That he wasn't wearing the same clothes and that the coat
9 he had on was a little bit small for him.

10 Q. And did he walk up to the truck and talk to you?

11 A. Yeah. He came to the passenger side. And I had opened
12 the door because I didn't know where his bottle was, and we
13 started -- I reached back, and it was just right there on that
14 seat. I didn't even notice. But I gave to him.

15 Q. And what kind of bottle was it?

16 A. Like a vodka bottle. A red cap, I guess.

17 Q. That's all you remember?

18 A. Uh-huh.

19 Q. When Mr. Oldman came up to the door and was talking to you
20 and got his bottle of red cap, did he say anything to you?

21 A. At first I kind of got after him because it was cold and
22 for drinking and this -- that he did get into a fight with
23 somebody or he did kick somebody's ass.

24 Q. What did he tell you?

25 A. That he kicked somebody's ass. And I wasn't really paying

1 attention, and when I asked who, he turned and looked away.

2 And I still can't remember the name he said.

3 Q. So you said he was wearing different clothes. So
4 different clothes from when you were with him at the casino?

5 A. Yeah.

6 Q. Do you recall what he was wearing when he came out and
7 talked to you in the truck?

8 A. Just trunks and a coat, a regular coat he put on, not a
9 hoodie.

10 Q. And by trunks, do you mean like shorts?

11 A. Yeah.

12 Q. And the coat, did the coat fit him?

13 A. No.

14 Q. Did you talk to him about that?

15 A. Yeah, because I told him to zip up. It wouldn't even --
16 it was too small.

17 Q. Did you notice anything about his body? Did he have
18 anything on him?

19 A. No. After he told me he had got into a fight, he was
20 trying to show me his hands, but I just barely looked at him
21 and pushed him away and told him, "Gross. I don't want to see
22 that." And I was telling my boy to go ahead and go back home.

23 Q. And why was it gross when you saw his hands?

24 A. I don't know. It's just something that I always say.

25 Just --

1 Q. Was there something on his hands?

2 A. There was -- you could tell he got into a scuffle, a
3 fight, a little bit of blood. But it was -- I just really
4 didn't look. I just pushed his hands away, his arms away.

5 Q. Did he ask you anything? Did Mr. Oldman ask you for
6 anything besides a bottle?

7 A. Yeah. If we could take him up to Jessica's.

8 Q. So he wanted a ride?

9 A. Yeah.

10 Q. And who's Jessica? Do you know?

11 A. That's his girlfriend.

12 Q. What'd you tell him?

13 A. That I didn't want Little Sun driving that late at night
14 on the road.

15 Q. So where did Mr. Oldman go?

16 A. He went back in.

17 Q. Back into the house?

18 A. Yeah.

19 Q. Do you know who lives at that house?

20 A. The Shakespeares, Loren and Juju.

21 Q. Juju lives there?

22 A. Yeah.

23 Q. Does he have -- does he go by another name?

24 A. I don't even -- I've never known his real name ever,
25 really.

1 Q. You just know him as Juju?

2 A. Yeah.

3 Q. Ms. Oldman, first I guess I would ask you, during November
4 of 2017, what was your cell phone number?

5 A. (307) 314-5375.

6 Q. Thank you.

7 MR. CONDER: Your Honor, the United States would --
8 well, let me do it this way.

9 Q. (BY MR. CONDER) Ms. Oldman, would you look at what's
10 marked as Government's Exhibit 8-1 on the overhead in front of
11 you?

12 THE COURT: It's being shown to the witness and
13 counsel only.

14 Q. (BY MR. CONDER) And so is that your cell phone number at
15 the top, (307) 314-5375?

16 A. Yeah.

17 Q. And I would zoom in down to the date of November 22 and go
18 to the evening time on, I guess, the next page. Looking at
19 that, can you tell what that is? Does that look familiar? It
20 probably doesn't look familiar, but can you figure out what
21 that is?

22 A. No.

23 MR. CONDER: Okay. Your Honor, at this time the
24 United States would move to admit Government's Exhibit 8-1.

25 THE COURT: Objections?

1 MS. AMRAM: No, Your Honor.

2 THE COURT: All right. Exhibit 8-1 will be admitted.
3 (Government's Exhibit 8-1 received.)

4 THE COURT: And, Counsel, as I understand,
5 Exhibit 8-1 is her cell phone log of calls or --

6 MR. CONDER: It's a cell phone log that's a summary,
7 a summary of her cell phone logs to a number.

8 THE COURT: All right. Thank you.

9 Q. (BY MR. CONDER) Let me actually -- it might be easier to
10 do this, Ms. Oldman.

11 MR. CONDER: The United States, Your Honor, would
12 move to admit and publish Government's Exhibit 8-2.

13 THE COURT: Any objections?
14 (Counsel confer.)

15 MS. AMRAM: No objections, Your Honor.

16 THE COURT: All right. Exhibit 8-2 will be admitted
17 and is being displayed to the ladies and gentlemen of the
18 jury.

19 (Government's Exhibit 8-2 received.)

20 (Playing video.)

21 Q. (BY MR. CONDER) Ms. Oldman, do you know what that is?

22 A. Yeah.

23 Q. Is that your cell phone?

24 A. Uh-huh.

25 Q. And what's on your cell phone there? What are we looking

1 at?

2 A. My texts to Arapaho.

3 Q. And are those your texts to Arapaho on November 22nd and
4 23rd that we've been talking about?

5 A. Uh-huh.

6 Q. So I'll pause it there and go back to the beginning.

7 (Playing video.)

8 Q. (BY MR. CONDER) Can you see that okay?

9 A. Yeah.

10 Q. So the first, it reads at the top Wednesday, November 22,
11 7:41 p.m. And did he text you?

12 A. Yeah.

13 Q. And what did he text you?

14 A. Asked if I could give him a ride.

15 Q. And what's your response?

16 A. I was already at the casino and asked him where he needed
17 to go.

18 Q. And what was his response?

19 A. "Gamble."

20 Q. And your response?

21 A. "I thought you was kicked out."

22 Q. And how did he respond?

23 A. "Clean shaved. Didn't mean to bother." So I told him I
24 was coming.

25 Q. Okay. And we'll go forward just a little bit.

1 (Playing video.)

2 Q. (BY MR. CONDER) And then we'll stop right there. And so
3 you respond again. You said you're coming?

4 A. Yeah. And I'm with my son, and he has the truck.

5 Q. Okay. And then what did you say next?

6 A. "Are you still gonna come?"

7 Q. Okay. And what was his response?

8 A. "Yeah."

9 Q. And then you responded back?

10 A. Yeah. But my son asked if he had a couple bucks for gas.

11 MR. CONDER: We'll go forward a little bit. We'll
12 stop right there.

13 Q. (BY MR. CONDER) And then he responded to that when you
14 said your son asked if he had a couple bucks for gas, LOL?
15 And he responded?

16 A. "Two."

17 Q. And then what did you say?

18 A. "Okay. We'll be there in a few. I gotta crutch out of
19 here."

20 Q. Is that because you were on crutches?

21 A. Uh-huh.

22 Q. And what did he say?

23 A. He said he was outside waiting.

24 Q. Do you know what time that was?

25 MR. CONDER: If we can scroll forward a little bit.

1 We'll pause right there.

2 A. 9:04.

3 Q. (BY MR. CONDER) So at 9:04 on November 22, he told you he
4 was outside waiting?

5 A. Yeah.

6 Q. Is that about accurate with what you remember?

7 A. Yeah.

8 Q. Okay. Thanks.

9 MR. CONDER: We'll go forward a little bit further
10 and stop it right there.

11 Q. (BY MR. CONDER) And it says Thursday, November 23 at
12 12:40 a.m. And what did you -- it looks like you sent him a
13 text. What did you say?

14 A. I was checking on him. It says, "Hey, bro, you all right?
15 Sent Winter out to take you wherever you wanted to go, and he
16 said you was gone. But I went --" do I have to read the whole
17 thing?

18 Q. And then does it say, "I went fricking broke because
19 you --"

20 A. Yeah.

21 Q. Yeah.

22 A. And I asked him about the DVD thing.

23 MR. CONDER: Okay. And we'll scroll down a little
24 further.

25 Q. (BY MR. CONDER) So that was at 12:40 a.m. on the 23rd?

1 A. Yeah.

2 MR. CONDER: Okay. Scroll forward. Back it up just
3 a little.

4 Q. (BY MR. CONDER) All right. So on Thursday, November 23
5 at 4:02, you received a text from him. And what does that
6 say?

7 A. "Got my trav and, sis, need help."

8 Q. What's your response?

9 A. "What's up?"

10 MR. CONDER: All right. Go forward. Stop right
11 there.

12 Q. (BY MR. CONDER) What did he say to you:

13 A. "Left my travel on your ride, sis. Can I come get it?
14 Sick bad. At GP."

15 Q. What does that mean, "Left my travel on your ride?" Is
16 that the bottle?

17 A. Probably, yeah.

18 Q. And you knew that was a traveler? Is that what he meant,
19 you think?

20 A. Yeah.

21 Q. And what's GP?

22 A. Great Plains.

23 Q. So you knew where to go?

24 A. Yeah.

25 Q. And then your response?

1 A. Supposed to been "Really?" But it didn't go through.

2 Q. And then the next one?

3 A. It says "I'm outside --" or "Outside."

4 Q. And we'll -- it will tell us what time right there.

5 A. 4:39.

6 Q. So at 4:39 a.m. you went outside and talked to Mr. Oldman
7 and gave him his bottle and talked to him?

8 A. Yeah.

9 Q. Okay. Thank you. Do you recall after that early morning
10 hour of November 23 the next time you saw Mr. Oldman?

11 A. That Saturday morning.

12 Q. And what was -- where did you see him? What happened that
13 day?

14 A. We went and picked up one of his friends up in Fort
15 Washakie.

16 Q. And where did you take them?

17 A. To Riverton.

18 Q. And did they -- did they pay you for taking them over
19 there?

20 A. Yeah.

21 Q. So when was the next time you saw him? Let me back up. I
22 apologize.

23 So when you -- when you picked up Arapaho on the 25th
24 and took him to Fort Washakie, where did you pick him up at?

25 A. Charlotte's.

1 Q. Same place in Riverton?

2 A. Yeah.

3 Q. And then it was just you and he rode to Fort Washakie
4 together?

5 A. Yeah.

6 Q. What'd you guys talk about?

7 A. That he -- he had talked with WinterHawk when we were
8 together that Wednesday about our Native American church and
9 how he wanted to go back to it and wanted WinterHawk to help
10 him and how he kind of wanted to change.

11 Q. Did you talk to him about the night -- the Thanksgiving
12 morning, stopping by the house, dropping off a bottle, and him
13 saying he beat somebody up?

14 A. No. It never came up.

15 Q. You didn't talk about any of that?

16 A. No.

17 Q. At any time that day, on the 25th, did you guys talk about
18 that at all?

19 A. No.

20 Q. When was the next time you saw Mr. Oldman? Do you recall?

21 A. I can't --

22 Q. Early December?

23 A. Yeah.

24 Q. And where did you see him?

25 A. He showed up at my house.

1 Q. Did he come inside your house?

2 A. No.

3 Q. Why not?

4 A. Because we said he couldn't come in.

5 Q. Why wasn't he allowed in your house?

6 A. Because we already heard what was being said and what
7 happened.

8 Q. Did you talk to Mr. Oldman about what was being said and
9 what happened?

10 A. When we left my house, because I gave him a ride.

11 Q. Where'd you give him a ride to?

12 A. To Big Wind. I don't know whose house it is, but it's a
13 blue house at Big Wind.

14 Q. Did he tell you -- what did he tell you?

15 A. That the feds are after him and they almost got him and
16 that he barely got away and that he spent the night in the big
17 ditch.

18 Q. Did he tell you anything about what happened that night
19 when you picked him up at Great Plains?

20 A. I -- I asked him, because I had told him that was going to
21 be the last time I helped him. And I told him not to lie to
22 me, and I asked him if he did it.

23 Q. What'd he tell you?

24 A. He said, "No, but I helped."

25 Q. What did he tell you after that?

1 A. After I got him to the house at that gate, he stopped. He
2 was getting out. He just said that -- to "tell my nephews I'm
3 sorry" and turned around and gave me a hug and said, "I love
4 you, sis," and he got out.

5 Q. When you guys were driving and talking that day, did he
6 talk to you about going anywhere or doing anything?

7 A. Yeah.

8 Q. What did he talk to you about?

9 A. Just that my cousin Dionne was going to be coming to get
10 him.

11 Q. Who's Dionne?

12 A. His wife.

13 Q. And where does she live?

14 A. I think Sheridan.

15 Q. And so what did he say? She was going to come get him and
16 do what? What was going on?

17 A. I don't know. He just said in a couple days Dionne was
18 going to be there to get him.

19 Q. Why did you tell him you couldn't help him again?

20 A. Because I didn't want to get in trouble.

21 MR. CONDER: May I have one moment, Your Honor?

22 THE COURT: You may.

23 (Discussion off the record.)

24 Q. (BY MR. CONDER) Ms. Oldman, we saw that Government's
25 Exhibit 8-2 was a video of your phone and some text messages.

1 When you were speaking with the FBI, did you show them other
2 text messages?

3 A. I shared everything I saved, I believe.

4 Q. What's that?

5 A. I think I shared the same thing with everybody, showed you
6 guys everything I had.

7 Q. Okay. No, and I understand that. I was just -- but did
8 you show -- when the authorities came to talk to you, did you
9 show them your cell phone?

10 A. Yeah.

11 MR. CONDER: Okay. At this time, Your Honor, the
12 United States would move to admit Government's Exhibits 8-3
13 and 8-4.

14 THE COURT: Any objections?

15 MS. AMRAM: No, Your Honor.

16 THE COURT: All right. Exhibits 8-3 and 8-4 will be
17 admitted.

18 (Government's Exhibits 8-3 and 8-4 received.)

19 MR. CONDER: Your Honor, just a housekeeping measure.
20 Was 8-1 admitted? 8-1?

21 THE COURTROOM DEPUTY: Yes.

22 THE COURT: Yes. And so that the record's clear, 8-3
23 and 8-4 are?

24 MR. CONDER: 8-3 and 8-4, Your Honor, are videos of
25 text messages in the ensuing days, from the 24th, 25th, and

1 ensuing days of November.

2 THE COURT: From Ms. Oldman's phone?

3 MR. CONDER: Ms. Oldman's phone to Mr. Oldman, to and
4 from the defendant, Your Honor.

5 THE COURT: All right. Very well. Thank you.

6 Cross-exam.

7 MS. AMRAM: Just one second, Your Honor.

8 (Counsel confer.)

9 MS. AMRAM: No questions, Your Honor.

10 THE COURT: All right. May this witness be released
11 from any subpoena?

12 MR. CONDER: Yes, Your Honor.

13 MS. AMRAM: Yes, Your Honor.

14 THE COURT: Ma'am, you may step down. You're free to
15 go.

16 The United States may call its next witness.

17 MR. CONDER: Your Honor, the United States would call
18 WinterHawk Felter.

19 THE COURT: Mr. WinterHawk Felter will come forward
20 and be sworn.

21 (The witness was sworn.)

22 THE COURTROOM DEPUTY: Please state and spell your
23 name for the record.

24 THE WITNESS: My name's WinterHawk Felter,
25 W-I-N-T-E-R-H-A-W-K F-E-L-T-E-R.

1 THE COURTROOM DEPUTY: Please state your occupation
2 and your city of residence.

3 THE WITNESS: My occupation?

4 THE COURTROOM DEPUTY: Do you work?

5 THE WITNESS: No. I'm in school.

6 THE COURTROOM DEPUTY: Thank you. And where do you
7 live? What town?

8 THE WITNESS: Arapahoe, Wyoming.

9 WINTERHAWK FELTER, GOVERNMENT'S WITNESS

10 DIRECT EXAMINATION

11 BY MR. CONDER:

12 Q. Good afternoon, Mr. Felter. So if you could tell us a
13 little bit about yourself. How old are you?

14 A. I am 19 years old.

15 Q. And where do you go to school?

16 A. Saint Stephens Indian High School.

17 Q. Where is that? Is that on the Wind River Indian
18 Reservation?

19 A. Yes.

20 Q. What do you do at Saint Stephens?

21 A. Right now I'll be -- well, since it's the second semester,
22 I'll be working for college classes.

23 Q. All right. What grade are you in?

24 A. 12th, senior.

25 Q. Senior. Are you on track to graduate?

1 A. Yes.

2 Q. Do you play any sports or activities?

3 A. Football.

4 Q. And how'd your team do this year?

5 A. We didn't go too far.

6 Q. What are your plans for the future with regard to
7 football?

8 A. Hopefully to be playing at a junior college league
9 somewhere.

10 Q. And so where do you live?

11 A. Left Hand Circle.

12 Q. Okay. And is that in Arapahoe?

13 A. Yes.

14 Q. And who's your mom?

15 A. Bridget Oldman.

16 Q. And who do you live with?

17 A. My mother, Bridget Oldman.

18 Q. And do you have any siblings?

19 A. I have three little siblings.

20 Q. And how old are they?

21 A. We go from 18, 17, to 15.

22 Q. And you're the oldest at 19?

23 A. Yeah.

24 Q. Are they all as big as you?

25 A. Almost.

1 Q. Do you know Mr. Arapaho Oldman?

2 A. Yes, a little bit.

3 Q. How do you know him?

4 A. Met him through my mom.

5 Q. And so how long do you think you've known him?

6 A. A couple months, a little -- a couple months.

7 Q. Do you remember the day before Thanksgiving of 2017?

8 A. A little bit.

9 Q. Did you see Arapaho Oldman that day?

10 A. No. That evening?

11 Q. Okay. That evening did you see him?

12 A. (Nodding head.)

13 Q. And where did you see him that evening?

14 A. When we went and picked him up at the trailer park.

15 Q. Okay. In Riverton?

16 A. Yes.

17 Q. And what were you driving?

18 A. My uncle's truck, Ford.

19 Q. A Ford truck. What color is that truck?

20 A. White.

21 Q. White. Okay. And who was with you when you picked up
22 Mr. Oldman?

23 A. My mother, Bridget.

24 Q. Okay. And you picked him up in Riverton?

25 A. Yes.

1 Q. And do you remember what he was wearing?

2 A. No. It was just jeans, shoes, and I think a white shirt.

3 Q. Jeans and shoes and a white shirt?

4 A. Yeah.

5 Q. So where did you and your mom come from?

6 A. The Wind River Casino.

7 Q. And when you picked Mr. Oldman up, where did you guys go?

8 A. Back to the casino.

9 Q. And what did you guys do at the casino?

10 A. Gambled.

11 Q. Did you win?

12 A. No, sadly.

13 Q. And so did you do anything with Mr. Oldman when you were
14 at the casino?

15 A. I ordered some food. He sat with me. He got up and
16 wanted to play, but he got chased back to me. It scared him.

17 Q. So the security sent him back over to you while you were
18 eating?

19 A. Yeah. And then we both got up, went next to the
20 nonsmoking area, to the very end, to the hotel. That's where
21 we were -- that's where we were sitting gambling and -- yeah.

22 Q. And where did he go? Did he stay with you, or did he
23 leave?

24 A. No, he didn't stay with me. He got chased out.

25 Q. So he left?

1 A. Yes.

2 Q. Do you know where he went?

3 A. No.

4 Q. Are you familiar with the Great Plains area --

5 A. Yes.

6 Q. -- of the Wind River Indian Reservation?

7 Do you recall being there in that area on November
8 30th of 2017?

9 A. Yes.

10 Q. Why were you there?

11 A. I was with my cousin Jeremiah.

12 Q. What were you guys doing?

13 A. Just hanging out at his house, playing games.

14 Q. What did you notice?

15 A. There was, like, cops, lights, and, like, a big old
16 commotion at that house. I can't remember which house.

17 Q. What's that house? Do you know that house?

18 A. No. I know it's next to my Grandpa Suttle's [phonetic]
19 house.

20 MS. AMRAM: Your Honor, can we have a sidebar,
21 please?

22 THE COURT: You may.

23 (At sidebar.)

24 MS. AMRAM: Your Honor, my concern is I think -- you
25 tell me if I'm wrong -- that Mr. Conder is going to have him

1 say that his mom told him that Arapaho had done something at
2 the house, and I would object to that under hearsay rules and
3 the confrontation clause. And so I just -- if that's what's
4 happening, I wanted to note that objection before it was said.

5 MR. CONDER: No, Your Honor. I honestly recognize
6 that, and I am going to ask him, though, if when Mr. Oldman
7 came to the house, if he would let him in. And he wouldn't
8 let him in the house.

9 THE COURT: All right.

10 MS. AMRAM: I just don't want his mom -- having his
11 mom say what she said to him [sic].

12 THE COURT: All right. I'll ask you to lead him in
13 terms of it so we avoid any potential of that.

14 MR. CONDER: Okay.

15 (End of sidebar.)

16 THE COURT: Go ahead, Mr. Conder.

17 MR. CONDER: Thank you.

18 Q. (BY MR. CONDER) Mr. Felter, do you remember, after being
19 with Mr. Oldman on the night of November 22, when did you next
20 see him?

21 A. The next month.

22 Q. In December?

23 A. In December.

24 Q. And where did you see him?

25 A. At my house, in front of my door.

1 Q. And did he come inside?

2 A. No.

3 Q. Did he stay outside on the porch and talk to your mom?

4 A. Yeah.

5 Q. And did he leave with your mom?

6 A. No.

7 Q. Did your mom give him a ride, or do you remember?

8 A. I don't. I just remember chasing him off, though.

9 MR. CONDER: May I have one moment, Your Honor?

10 THE COURT: You may.

11 (Discussion off the record.)

12 MR. CONDER: No further questions, Your Honor.

13 THE COURT: Cross-exam.

14 MS. AMRAM: No questions, Your Honor.

15 THE COURT: May this witness be released from
16 subpoena?

17 MR. CONDER: Yes, Your Honor.

18 MS. AMRAM: Yes, Your Honor.

19 THE COURT: You may step down. You're free to go.

20 The United States may call its next witness.

21 MR. CONDER: Your Honor, the United States would call
22 Little Sun Felter.

23 THE COURT: Mr. Little Sun Felter will come forward
24 and be sworn.

25 (The witness was sworn.)

1 THE COURTROOM DEPUTY: Please state and spell your
2 name for the record.

3 THE WITNESS: Little Sun Felter. Spell it too?

4 THE COURTROOM DEPUTY: Yes, please.

5 THE WITNESS: L-I-T-T-L-E S-U-N F-E-L-T-E-R.

6 THE COURTROOM DEPUTY: Please state your occupation
7 or your grade in school and your city of residence.

8 THE WITNESS: Junior. Arapahoe.

9 THE COURTROOM DEPUTY: Thank you.

10 LITTLE SUN FELTER, GOVERNMENT'S WITNESS

11 DIRECT EXAMINATION

12 BY MR. CONDER:

13 Q. Mr. Felter, you're a high school junior?

14 A. Uh-huh.

15 Q. Where do you go to school?

16 A. Saint Stephens Indian School.

17 Q. Good deal. Are you involved in any sports or activities?

18 A. Just football.

19 Q. Did you play basketball too?

20 A. No.

21 Q. No basketball?

22 A. No.

23 Q. And so where do you live? Not the exact address, but
24 what's the street name?

25 A. Left Hand Circle.

1 Q. And that's in Arapahoe?

2 A. Yeah.

3 Q. On the Wind River Reservation?

4 A. Yeah.

5 Q. All right. And who's your mom?

6 A. Bridget Oldman.

7 Q. And who do you live there with at Left Hand Ditch Circle?

8 A. I live with my mom and my three other brothers.

9 Q. And what number brother are you?

10 A. I'm the second.

11 Q. You're the second oldest. All right. And do you know
12 Arapaho Oldman?

13 A. No, not really.

14 Q. Have you heard of him before?

15 A. Yes.

16 Q. Do you remember going with your mom on the early morning
17 of Thanksgiving 2017?

18 A. Yes.

19 Q. And where did you go?

20 A. Just down the road, where, like, a housing -- a little bit
21 down where the road there's other housings. Just that far.

22 Q. Into Great Plains?

23 A. Yeah.

24 Q. And why did you go there?

25 A. Because my mom couldn't drive the steering wheel of the

1 truck. It was very difficult to drive with.

2 Q. Was your mom on crutches, or do you remember?

3 A. I can't remember. I think she was.

4 Q. And why did you go over to the Great Plains housing?

5 A. Because she wanted me to drive her. She couldn't drive.

6 Q. And when you got there, did you go to a house?

7 A. Yes.

8 Q. And what happened when you got to that house?

9 A. Just pulled up to -- it's not a driveway but the little
10 parts of it in front of the house, you could say, just pulled
11 up. And he just walked out, came up and went up to my mom and
12 said -- she was on the passenger; I was on the driver.

13 Q. And who's "him"? Is that Mr. Oldman?

14 A. Yeah.

15 Q. Okay. And what did he do when he got up to the car and
16 spoke to your mom?

17 A. He just asked for his drink. I don't know what kind of
18 drink it was but...

19 Q. Could you hear him and your mom talk?

20 A. They were talking about him blanking out, blacked out,
21 like, if I remember. He just said he had -- that he fought
22 someone, I guess. That's all I heard, remembered.

23 Q. You heard Mr. Oldman say that he fought somebody?

24 A. Yeah.

25 Q. And that he blanked out?

1 A. Yeah, that he didn't remember. That's what I heard from
2 him.

3 Q. And just to be clear, did he say he didn't remember who he
4 beat up? Is that what he was getting at?

5 A. Yes.

6 Q. Or at least you understood it that way?

7 A. Yeah.

8 Q. Did you notice anything about him, how he was dressed or
9 anything on him?

10 A. No. I just remembered he wore a gray tank top and blue
11 trunks.

12 Q. And shorts maybe?

13 A. Yeah.

14 Q. Did you notice anything about his body or his face or
15 arms, legs?

16 A. No.

17 Q. But he was over on the other side, talking to your mom?

18 A. Yes.

19 MR. CONDER: May I have a moment, Your Honor?

20 THE COURT: You may.

21 (Discussion off the record.)

22 Q. (BY MR. CONDER) Mr. Felter, did you notice anything on
23 Mr. Oldman's hands?

24 A. Huh-uh. He just showed my mom. I didn't bother to pay
25 any attention.

1 MR. CONDER: Thank you.

2 No further questions, Your Honor.

3 THE COURT: All right. Cross-exam.

4 MS. AMRAM: No questions, Your Honor.

5 THE COURT: May this witness be released from any
6 subpoena?

7 MS. AMRAM: Yes, Your Honor.

8 MR. CONDER: Yes, Your Honor.

9 THE COURT: You may step down. You're free to go.
10 Thank you.

11 All right. Quickly, sidebar, Counsel.

12 (At sidebar.)

13 THE COURT: Do we have any five-minute witnesses?

14 MR. CONDER: I'd have to look. I don't think so,
15 though.

16 THE COURT: All right. We'll go ahead and take our
17 evening recess, and then I'm going to talk with you about a
18 couple things.

19 (End of sidebar.)

20 THE COURT: Ladies and gentlemen of the jury, we'll
21 take our evening recess. I'll remind you of the recess
22 instruction. Don't talk about this case with anyone. Don't
23 allow anyone to talk to you about it. If anyone attempts to
24 do so, immediately report it to the Court.

25 Remember, you may only consider that evidence

1 introduced here in court through the witnesses and exhibits
2 introduced during this case. Don't conduct any independent
3 research or any other matters outside of this court to render
4 a decision.

5 Remember, don't begin deliberations until all the
6 evidence, instructions of law, arguments of counsel, and
7 hearing the views of your fellow jurors.

8 We'll stand in recess until 8:30 a.m.

9 Please rise.

10 (The jury exited the courtroom at 5:36 p.m.)

11 (The following took place outside the presence of the
12 jury.)

13 THE COURT: Go ahead and have a seat. I note the
14 absence of the ladies and gentlemen of the jury.

15 A couple of things that I wanted to address. First,
16 with regards to some objections, Ms. Hucke, you made during
17 examination of Mr. Whiteplume regarding leading, there were
18 two problems that I had and the reason why I overruled your
19 objection. One was it was a restatement. In some cases it
20 was a restatement of what had been said, so it wasn't
21 necessarily leading but rather a restatement. I probably
22 would have sustained an objection as to cumulative or asked
23 and answered.

24 But in any event, the other one with regards to
25 objection, hearsay, at least with regards to the uncle

1 downstairs, there had previously been testimony as to what the
2 uncle had said. But in any event I sustained the second
3 question regarding that when there was an objection raised.

4 With regards to some leading, I'll tell you, Counsel,
5 what I get nervous about and where I'll enforce leading
6 questions is when we're dealing with critical facts and
7 details that go to the memory and the recollection of the
8 witness. If we're doing foundational, if we're doing some
9 matters that aren't nitty-gritty detail, I'm not going to be
10 as tight on leading. But when we get into specific details,
11 that's where I become more strict on that.

12 Polygraph, there are a couple of cases. The Tenth
13 Circuit has generally recognized that polygraph results are
14 not admissible to show one is truthful. That's *United States*
15 *v. Hall*, 805 F.2d 1410 at 1416, Tenth Circuit 1986.

16 The question that led to the reference to polygraph,
17 can we --

18 (Discussion off the record.)

19 (The reporter read the questions and answer at
20 page 438, line 22 through page 439, line 1.)

21 THE COURT: So his response was an attempt to insert
22 the polygraph. It was a response -- there was another
23 response where he became nervous, and I asked you to be
24 specific as to who he talked to because I didn't want him to
25 make reference to it regarding the polygraph. So I don't see

1 that that was inserted gratuitously or inappropriately. It
2 was in response to the question.

3 There are -- well, what I would do -- and I didn't
4 make any reference to it. There was no request at that time
5 for any limiting instruction. But certainly in the case
6 law -- in particular *U.S. v. Tenorio*, and that's found at 809
7 F.3d 1126, footnote 3, where an issue regarding the polygraph
8 came up in trial, and the trial court instructed -- and
9 actually it was coming out of *Ha11*. The Court instructed,
10 "I'm going to instruct you that you are not to speculate --
11 you're not to take into consideration and you are not to
12 speculate as to what those polygraph examinations or the
13 results of those were in reference to the guilt or innocence
14 of the defendant, in reference to whether or not he did or did
15 not commit the acts that are charged in the indictment."

16 That comes out of *Ha11* at 1415 through -16. It is
17 referenced in *Tenorio*, which I noted that not only do the jury
18 instructions mirror those that were approved in *Ha11* but --
19 and that was what was approved in *Ha11*. They footnoted that
20 statement.

21 So if defendant wishes to have this Court give a
22 limiting instruction, I will certainly do that, but I did not
23 want to ring the bell unless you wanted me to ring it. And
24 I'm certainly willing to give that limiting instruction given
25 that I don't want the jury to speculate about any polygraph

1 results.

2 All right. Anything regarding those matters,
3 Ms. Amram?

4 MS. AMRAM: Your Honor, we -- I understand the
5 Court's ruling. If I could just make a brief record about the
6 polygraph issue.

7 As the Court mentioned when we discussed it at
8 sidebar -- I think it was in a break -- there have been a
9 number of polygraphs in this case. The -- for the most part,
10 the Government's witnesses failed them, except for Bernadette
11 Brown, which was inconclusive. Arapaho Oldman passed one. I
12 did not ask -- move in limine for any polygraph results to be
13 admitted because I -- well, obviously I would have wanted them
14 to be for many reasons, because I looked at the Tenth Circuit
15 case law. And while the Tenth Circuit said it should be on a
16 case-by-case basis, I think it's fair to say the Tenth Circuit
17 was less than enthusiastic about polygraphs. And so I did not
18 ask.

19 But I am concerned that because a Government witness
20 mentioned that he took a polygraph, that the jury -- whatever
21 the Court does with an instruction, and we'll consider whether
22 or not to ask for one -- will, you know, wonder if he passed
23 it. And I think that the jury should be told that he failed.
24 I understand that it was not something Mr. Conder elicited,
25 and it's not his fault personally. And I understand the

1 witness was struggling, but it was still a Government witness
2 who said that he'd taken a polygraph.

3 So because of that, we would ask that it just be
4 admitted that he failed, not -- but I understand the Court's
5 ruling. I just wanted to put that on the record.

6 THE COURT: All right. Mr. Conder, anything you want
7 to put on the record regarding the matter?

8 MR. CONDER: Your Honor, I would just briefly say in
9 regard to Mr. Whiteplume, he was asked a vague question, and
10 he gave an answer trying to figure out what time was being
11 talked about. I think that was clear. He was asked over and
12 over multiple times, "Last month? Last year?" The year was
13 being confused between '19, '18, '17. And so I don't think he
14 was trying to do anything nefarious. He just answered that
15 trying to answer the question he thought he was asked. We had
16 obviously talked to his attorney and told him not to say
17 anything like that.

18 Additionally, Your Honor, I would just note for the
19 record that not all polygraphs are the same. And so before
20 any polygraph results are admitted, we'd want a hearing. But
21 the Court doesn't seem like that's an option.

22 THE COURT: Well, there's been multiple references in
23 various motions, DNA evidence motion, all those and whatnot as
24 to the polygraph tests and who failed, who passed. It's not
25 coming in. The jury's going to determine who fails and passes

1 in terms of what the issues and charges in this case are.

2 If you had wanted those results, the details of those
3 results in, I would anticipate you would have sought that and
4 we would have gone around that. I can understand why you
5 wouldn't give the Tenth Circuit case law. But they did
6 recognize in subsequent cases that there's not a per se
7 inadmissibility, but it's on a case-by-case basis. And
8 there's not been one case that I've found, frankly, where the
9 Tenth Circuit or any District Court, for that matter, has
10 admitted in a criminal matter polygraph results in the Tenth
11 Circuit.

12 That being said, the issue that's created by the --
13 and certainly counsel asked a question, and the witness is
14 challenging, and he responds to the question trying to get
15 clarification. And the question was asked by defense counsel.
16 You weren't seeking to elicit it, but it came out. Now,
17 having come out, I'm not going to allow you to use a shield
18 and a sword. I mean, you asked the question. He gave the
19 response. It wasn't a completely gratuitous response.

20 That being said, the sole remedy and the appropriate
21 remedy this Court would find, if the defendant wishes to have
22 it done, is for this Court to simply advise the ladies and
23 gentlemen of the jury that they are not to take into
24 consideration or speculate as to any polygraph examinations or
25 the results of those examinations with regards to any

1 witnesses. They and they alone will determine the truth and
2 credibility of the witnesses. If you want that, it's yours.
3 If you don't, then I'm not going to give it, because it's your
4 right to protect. All right. You can tell me in the morning.
5 You can contemplate it.

6 Anything else we need to address at this time,
7 Mr. Conder?

8 MR. CONDER: Nothing from the United States, Your
9 Honor.

10 MS. AMRAM: Your Honor, I just wanted to get -- if we
11 could have an update as to scheduling. And I know the
12 Government has, I believe, ten more witnesses to go. I am
13 trying to figure out if we need to have defense witnesses
14 lined up for tomorrow. My guess is it would take us tomorrow
15 to do ten witnesses, but if we should have defense witnesses
16 here, we will. So I wanted to check.

17 THE COURT: We'll go ahead and go off the record.

18 (Proceedings concluded at 5:46 p.m., January 8, 2019.)
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C E R T I F I C A T E

I, ANNE BOWLINE, Court Reporter in the state of Wyoming, a Registered Merit Reporter and Certified Realtime Reporter, do hereby certify that I reported by machine shorthand the proceedings contained herein on the aforementioned subject on the date herein set forth, and that the foregoing 295 pages constitute a full, true and correct transcript.

Dated this 1st day of May, 2019.

/s/ Anne Bowline

ANNE BOWLINE
Registered Merit Reporter
Certified Realtime Reporter